

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

19 2004

In the matter of Application Serial No. 75/247,806
Published in the *Official Gazette (Trademarks)* on March 14, 2000
Mark: CLEAR COLOR FOR CONTAINERS OF MOTOR OIL

TEXACO, INC.,

Opposer,

PENNZOIL-QUAKER STATE COMPANY,

Applicant.

§
§
§
§
§
§
§
§

Opposition No. 120,520

Office of the Solicitor
Director of the United States Patent and Trademark Office
P.O. Box 15667
Arlington, VA 22215

**APPLICANT'S CONSENTED REQUEST TO EXTEND
TIME TO COMMENCE JUDICIAL REVIEW**

Pursuant to 37 C.F.R. 2.145(e), Applicant Pennzoil-Quaker State Company ("Applicant") requests that the Director extend by sixty (60) days the time for Applicant to seek judicial review of the final decision of the Trademark Trial and Appeal Board ("Board") in this opposition proceeding. As discussed infra, good cause exists for the extension. Opposer Texaco, Inc. ("Opposer") consents to Applicant's request for a sixty (60) day extension.

27 JULY 2004
GRANTED
Stephen Walsh
ACTING SOLICITOR

Date of Deposit	<u>July 13, 2004</u>
I hereby certify under 37 CFR 1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated above and is addressed to the Office of the Solicitor, Director of the United States Patent and Trademark Office, P.O. Box 15667, Arlington VA 22215.	
<u>Kim Kennedy</u>	
Kim Kennedy	

I. STATEMENT OF FACTS AND RELIEF SOUGHT.

Applicant filed an application for its mark Clear Color For Containers For Motor Oil on February 25, 1997 ("the Mark"). After examination and subsequent publication of the Mark, Opposer instituted an opposition proceeding on October 17, 2000. On May 28, 2004, the Board sustained the opposition, denying the registration of the Mark. On May 10, 2004, shortly before receiving the Board's decision, Applicant's attorney-in-charge of this proceeding, Margaret A. Boulware, underwent major surgery. Ms. Boulware only returned to work on July 12, 2004. Applicant requests an extension of (60) days from the current deadline of July 28, 2004 to seek judicial review of the Board's final decision. The time for seeking judicial review of the Board's decision has not yet expired. Opposer consents to Applicant's extension request.

The fees for filing of this document of \$100.00 are enclosed. Should the Director deem further fees are necessary, or should the check be separated from the request, the Director is authorized to charge Deposit Account No. 10-0447 (41521-00213USTP) for any amount necessary.

II. THE DIRECTOR SHOULD GRANT APPLICANT'S REQUEST FOR AN EXTENSION.

A. Legal Standard.

The Lanham Act provides that review of a final decision by the Board may be made either to the United States Court of Appeals for the Federal Circuit or by instituting a civil action in a district court. *See* 15 U.S.C. § 1071(a)-(b). Either avenue of judicial review must be commenced within two months of a final decision by the Board. *See* 37 C.F.R. § 2.145(d). However, the Director may extend the time for seeking judicial review of the Board's decision. *See* 37 C.F.R. § 2.145(e). Specifically, "[t]he Director may extend the time for filing an appeal

or commencing a civil action . . . for good cause shown if requested in writing before the expiration of the period for filing an appeal or commencing a civil action . . .”. 37 C.F.R. § 2.145(e).

B. There is Good Cause for an Extension.

Margaret A. Boulware has been the Applicant’s attorney-in-charge throughout the prosecution of the trademark application and during the opposition proceeding, a period that has spanned over seven (7) years. *See* Declaration of Margaret A. Boulware at Paragraphs 2-3, attached hereto as Ex. A. Ms. Boulware had emergency surgery performed on May 10, 2004, and continues to rehabilitate from that surgery. *See id.* at Para. 4. The Board’s final decision in the opposition proceeding issued on May 28, 2004. However, for the first eight weeks after the surgery, Ms. Boulware had minimal contact with her law office and clients in order to concentrate on her physical recovery. *See id.* at Para. 6. Accordingly, Ms. Boulware has been unable to devote sufficient time to review the voluminous files associated with this proceeding and confer with the Applicant regarding its options. *See id.* Ms. Boulware only returned to her law office on July 12, 2004. *See id.*

III. CONCLUSION

Applicant requests a sixty (60) day extension, or until September 26, 2004, to commence judicial review of the Board’s final decision in this proceeding. Opposer consents to the Applicant’s request for an extension.

Respectfully submitted,

Date: July 13, 2004

Margaret A. Boulware
Margaret A. Boulware
Attorney for Applicant
Pennzoil-Quaker State Company

Jenkins & Gilchrist,
A Professional Corporation
1401 McKinney, Suite 2600
Houston, Texas 77010
(713) 951-3300
(713) 951-3314 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July, 2004, a true and correct copy of the foregoing "Applicant's Consented Request to Extend Time to Commence Judicial Review" was served by United States Certified Mail, Return Receipt Requested, postage prepaid, to counsel for Opposer Texaco Inc., at the following address:

William G. Pecau
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, District of Columbia 20036

Margaret A. Boulware

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Matter of Application Serial No. 75/247,806
Published in the Official Gazette (Trademarks) on March 14, 2000

A

TEXACO, INC.,

Opposer,

v.

PENNZOIL – QUAKER STATE
COMPANY,

Applicant.

§
§
§
§
§
§
§
§
§
§

Opposition No. 120,520

**DECLARATION OF MARGARET A. BOULWARE IN
SUPPORT OF APPLICANT'S CONSENTED REQUEST TO
EXTEND TIME TO COMMENCE JUDICIAL REVIEW**

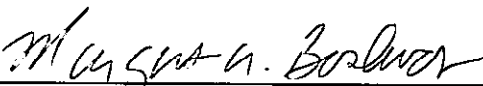
I, Margaret A. Boulware, declare as follows:

1. I am over eighteen years of age, have personal knowledge of the matters set forth herein, and each of them is true and correct.
2. I am an attorney with Jenkins & Gilchrist and I am lead counsel representing Applicant Pennzoil – Quaker State Company (“Pennzoil”) in the above-referenced opposition.
3. I have supervised the trademark application (including the corresponding opposition proceeding) since its inception over seven years ago.
4. I was hospitalized on April 29, 2004 and underwent major surgery on May 10, 2004. Since the date of my surgery, I have been recovering and engaged in physical rehabilitation, and have been unable to return to my law office.
5. The decision of the Trademark Trial and Appeal Board (“Board”), sustaining the opposition, was issued on May 28, 2004. The deadline to seek judicial review of the Board’s decision is two months from the date the final decision issued, or July 28, 2004.

6. Due to my ongoing recovery from surgery and corresponding absence from my law practice, I have been unable to devote adequate time to review the Board's opinion, the files of this proceeding, and confer with my client regarding the Board's decision. I returned to my law office to resume my law practice on July 12, 2004.
7. I have conferred with counsel for Texaco, Inc. who consented on behalf of Texaco to granting Pennzoil a sixty (60) day extension to file an appeal or a new lawsuit, the extension being added to the end of the existing two month deadline.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

This declaration was executed on this 13th day of July, 2004.


Margaret A. Boulware