

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

TOMMY HILFIGER LICENSING, INC.,)
)
)
Opposer,)
)
v.)
)
TOMY COMPANY, LTD.,)
)
)
Applicant)

Opposition No.: 91-151,531
Application No.: 76/055,798
Mark: TOMY

BOX TTAB
NO FEE

US PATENT & TRADEMARK OFFICE
2005 JUN 14 P 3:4-
TRADEMARK TRIAL AND APPEAL BOARD

**MOTION FOR ENLARGEMENT OF TIME UNDER F.R.C.P. 6(B)
TO EXTEND DISCOVERY AND TESTIMONY PERIODS**

TOMY COMPANY, LTD. ("Applicant"), through undersigned counsel, hereby moves the Trademark Trial and Appeal Board ("Board") to extend the discovery and testimony periods in the proceeding by one (1) month from the date proceedings resumed as set forth in the Board's Notice of Suspension mailed November 29, 2004 ("November 29, 2004 Suspension Notice"), and set a period for filing an answer to the Notice of Opposition. This extension of the discovery and testimony periods is sought to file and serve an answer to the Notice of Opposition, and is not sought for purposes of delay.

Pursuant to 37 C.F.R. Sections 2.120(a) and 2.121(a)(1), Trademark Trial and Appeal Board Manual of Procedure §509 and Federal Rule of Civil Procedure 6(b), the Board is empowered to grant a motion to extend the discovery and testimony periods, even over the objection of a party, upon a showing of good cause.

As set forth below, and in the accompanying Declaration of Joseph Berry, dated June 13, 2005 ("Berry Declaration"), good cause exists because Applicant never received the November 29, 2004 Suspension Notice informing the Applicant of the date proceedings would resume. Further, the November 29, 2004 Suspension Notice did not set a period for filing an answer to the Notice of Opposition.

On or about April 24, 2002, TOMMY HILFIGER LICENSING, INC. ("Opposer"), through counsel, filed the Notice of Opposition initiating the present proceedings. The Applicant's obligation to file an answer to the Notice of Opposition was initially extended to give the Applicant an opportunity to investigate the issues raised by the Notice of Opposition. The Applicant's obligation to file an answer was then suspended through a series of suspensions



obtained to pursue (then) ongoing settlement negotiations between the parties. Accordingly, the Applicant was never obligated to file an answer.

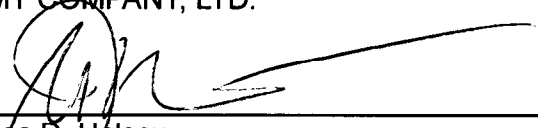
On or about November 29, 2004, the Board issued the November 29, 2004 Suspension Notice noting the latest suspension, which was for a period of six (6) months. The Applicants never received the November 29, 2004 Suspension Notice. Berry Declaration, ¶ 4. Accordingly, Applicant was unaware of the trial dates (including discovery). More importantly, the November 29, 2004 Suspension Notice did not set a period for filing an Answer to the Notice of Opposition.

The Board's often stated policy is to be liberal in granting enlargements of time as long as the moving party has not been negligent or guilty of bad faith. American Vitamin Prod. In.c.v. DowBrands Inc., 22 USPQ2d 1316 (TTAB 1992). Accordingly, Applicant respectfully requests that the Board enter an Order granting a one (1) month extension of time and setting a period for filing a reply to the Notice of Opposition to permit the Applicant to file an Answer to the Notice of Opposition. As outlined above, such an extension is necessary as no period for filing an answer has been set.

Applicant asserts that the foregoing represents good cause within the meaning of Fed. R. Civ. P. 6(b) and TBMP §509.01(a). If for any reason the Board will not approve this Motion, it is respectfully requested that the undersigned counsel for Applicant and counsel for Opposer be contacted by telephone to dispose of this interlocutory matter.

Respectfully submitted,
TOMY COMPANY, LTD.

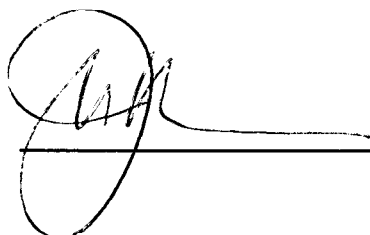
Dated: June 14, 2005

By: 
James D. Halsey
Christopher P. Mitchell
STAAS & HALSEY LLP
1201 New York Avenue, N.W., Suite 700
Washington, D.C. 20005
Tel. (202) 434-1500
Fax (202) 434-1501

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of June, 2005, a true and correct copy of the foregoing MOTION FOR ENLARGEMENT OF TIME UNDER F.R.C.P. 6(B) TO EXTEND DISCOVERY AND TESTIMONY PERIODS was served on Opposer by sending the same in an envelope to the following:

Mary L Grieco, Esq.
DREIER LLP
499 Park Avenue
New York, New York 10022



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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____)
TOMMY HILFIGER LICENSING, INC.,)
)
Opposer,)
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v.)
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TOMY COMPANY, LTD.,)
)
Applicant.)
_____)

Opposition No.: 91151531

DECLARATION OF JOSEPH BERRY

I, **JOSEPH BERRY**, declare that:

1. I have been employed in the Docketing Department of the firm of Staas & Halsey since March 15, 2000, and my title is Docketing Specialist.

2. I am directly responsible for docketing all incoming USPTO correspondence, and for making note of such correspondence and the due date for any response due, by the Docketing Department.

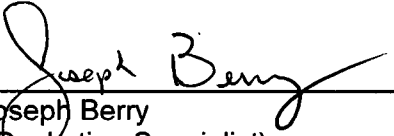
3. During the regular course of business, USPTO mail received by Staas & Halsey is first opened and date-stamped, and separated into a specific file. The USPTO mail file is then passed directly to me in the Docketing Department. I check each piece of USPTO mail against our Docketing database by docket number and serial number. Any USPTO correspondence which requires a response is docketed in our Docketing database. Only then is the correspondence passed to the responsible attorney.

4. Attached hereto are copies of the pertinent docketing database printout which is used by the Firm. According to the Docketing Department's records, the TTAB Order mailed November 29, 2004 was not received by our firm.

Opposition No.: 91151531

- 2 -

5. I declare under penalty of perjury that the foregoing is true and correct.



Joseph Berry
(Docketing Specialist)

Date: June 13, 2005

6/13/2005

Trademark Information Print

Docket No	1419.6301	Expiration Dt	
Country	United States	Renewal Dt	
Case Type	Regular	Pub. Date	
Filing Type	National	Agent	
Filing No		Assignee	
Billing Attorney	James D. Halsey, Jr.	Record Date	
Originating Attorney	James D. Halsey, Jr.	Reel/Frame	
Client/Division	KOYO INTERNATIONAL TECHNICAL	No. of Pages	
Applicant		Client Ref No.	
Agent		Priority Ctry	
Status	Filed	Priority Dt	
Sub Status	Opposition	Priority No	
Sub Status Dt	4/30/2001	Based on RNL Dt	
Serial Number	91/151,531	Based on Ctry	
Appln Filing Date	6/4/2002	Mark No	
Serial Number	91/151,531	Priority Claim	
Appln Filing Date	6/4/2002	Based On Mark Flag	
Registration No		Mark Name	TOMY COMPANY. LTD. V.
TOM			
Registration Date		Create Dt	5/20/2002
Registration No		Update Date	3/3/2005
Registered Date		Update Time	1105
Assigned		Update User	VDR
Start Date		Update Type	
Earliest Rts Dt		Verified	
Start Date		Customer	
First Use Dt			

Actions

Action	Incoming Mail Recvd	DeadLn Dt	
Act Due Date	5/23/2002	Comp Dt	5/29/2002

Act Notes
LTR RE: OPPOSITION**

Action	Incoming Mail Recvd	DeadLn Dt	
Act Due Date	6/4/2002	Comp Dt	6/11/2002

Act Notes
CONFIRM RE: 60 DAY EOT**

Action	PTO Commnctn Recvd	DeadLn Dt	
Act Due Date	7/11/2002	Comp Dt	7/18/2002

Act Notes
.....TO EXTEND DISCOVERY AND TRIAL DATES IS GRANTED.....***
**

Action	EOT to File Opp Fld	DeadLn Dt	7/22/2002
Act Due Date	7/22/2002	Comp Dt	7/22/2002

Act Notes
Dear Mr. Iwakura:

By way of summary, we have until August 15, 2002 to respond to the Notice of Opposition filed by Tommy Hilfiger.

The Kellogg Company has until August 24, 2002 to file its Notice of Opposition or to request additional time. It would be helpful if you could advise whether you would be agreeable to extending Kellogg's time further.

According to our records, no further requests for extensions of time have been filed by Tommy Boy Music, Inc.

Please advise about the status of negotiations with Tommy Hilfiger and your views regarding further extensions of time for Kellogg.

Sincerely,

James D. Halsey, Jr.
Senior Counsel

Action	Incoming Mail Recvd	DeadLn Dt	
Act Due Date	7/24/2002	Comp Dt	7/31/2002

Act Notes
CONFIRM RE: AGREEMENT W/EOT**

Action	Incoming Mail Recvd	DeadLn Dt	
Act Due Date	7/30/2002	Comp Dt	8/6/2002

Act Notes
CONFIRM RE: JULY 24 LTR FROM CLIENT**

Action	Incoming Mail Recvd	DeadLn Dt	
Act Due Date	7/31/2002	Comp Dt	8/5/2002

Act Notes
CONFIRM RE: INSTRUCT TO OBTAIN 60 DAY EOT**

Action	Incoming Mail Recvd	DeadLn Dt	
Act Due Date	8/13/2002	Comp Dt	8/19/2002

Act Notes
CONFIRM RE: REQ FOR EOT**

Action	Answer Filed/EOT	DeadLn Dt	8/15/2002
Act Due Date	8/15/2002	Comp Dt	8/6/2002

Act Notes
HANDCARRY TO TM TRAIL & APPEAL BOARD, 2900 CRYSTAL DRIVE, SO
. TOWER BUILDING , 9TH
FL--STIPULATED REQ FOR EOT TO ANSWER NOT. OF OPPOSITION (IN
DUPLI)**
08/05/2002-CONFIRM RE: INSTRUCT TO OBTAIN 60 DAY EOT**

Action	PTO Commnctn Recvd	DeadLn Dt	
Act Due Date	11/26/2002	Comp Dt	12/4/2002

Act Notes
PARTIES ARE NEGOTIATING FOR A POSSIBLE SETTLEMENT, PROCEEDIN
GS ARE SUSPENDED FOR
SIX MONTHS *****

Action	Incoming Mail Recvd	DeadLn Dt	
Act Due Date	5/23/2003	Comp Dt	5/30/2003

Act Notes
LTR RE: ADVS RQST SUSPENSION OF OPPOSITION FOR 2 MONTHS***

Action	PTO Commnctn Recvd	DeadLn Dt	
Act Due Date	6/25/2003	Comp Dt	6/30/2003

Act Notes
OPPOSER'S CONSENTED MOTION FOR FURTHER SUSPENSION FILED 5/30
03 IS GRANTED ..

Action	PTO Commnctn Recvd	DeadLn Dt	
Act Due Date	9/15/2003	Comp Dt	9/18/2003

Act Notes
09/15/2003 REQUEST FOR FURTHER SUSPENSION IS GRANTED FOR 3 M
ONTHS **

Action Incoming Mail Recvd DeadLn Dt
Act Due Date 3/16/2004 Comp Dt 3/22/2004

Act Notes
MOTION TO FURTHER SUSPENSION OF PROCEEDINGS

Action PTO Commcnctn Recvd DeadLn Dt
Act Due Date 4/8/2004 Comp Dt 4/12/2004

Act Notes
PLAINTIFF'S CONSENTED MOTION TO FURTHER SUSPEND PROCEEDINGS,
FILED 3/16/2004

Action Status Inquiry DeadLn Dt
Act Due Date 4/8/2005 Comp Dt

Act Notes
Suspension Expired 10.8.04

Action Communication Filed DeadLn Dt
Act Due Date Comp Dt 10/29/2002

Act Notes
(49) HAND CARRY TO TRADEMARK TRIAL AND APPEAL BOARD, 2900 C
RYSTAL DR. S TOWER 9th fl;
STIPULATED REQUEST FOR EXTENSION OF TIME TO ANSWER NO
TICE OF OPPOSITION..*****

Action Communication Filed DeadLn Dt
Act Due Date Comp Dt 9/10/2002

Act Notes
HAND CARRY TO TRADEMARK TRIAL AND APPEAL BOARD, 2900 CRYSTAL
DR. S TOWER 9th fl;
STIPULATED REQUEST FOR EXTENSION OF TIME TO ANSWER NOTICE OF
OPPOSITION..*****

Action No Foreign Filing Needed DeadLn Dt
Act Due Date Comp Dt

Action Communication Filed DeadLn Dt
Act Due Date Comp Dt 6/4/2002

Act Notes
HAND CARRY TO TRADEMARK TRIAL AND APPEAL BOARD, 2900 CRYSTAL
DR. S TOWER 9th fl;
STIPULATED REQUEST FOR EXTENSION OF TIME TO ANSWER NOTICE OF
OPPOSITION..*****

Action Communication Filed DeadLn Dt
Act Due Date Comp Dt 6/23/2003

Act Notes
54) HANDCARRY TO TTAB; CHANGE OF ADDRESS OF COUNSEL****

Full Mark Name

Mark
TOMMY COMPANY. LTD. V. TOMMY HILFIGER LICENSING, INC.

Fax/Express Log

Trans Type Incoming Fax

Comments
7-24-02 1 PGS RE-HILFIGER CONTINUING SETTLEMENT DISCUSSIONS

Trans Type Incoming Fax

Comments
7-30-02 1 PGS RE-AWAITING REPLY TO LETTER OF JULY 24

Trans Type Incoming Fax

Comments

7-31-02 1 PGS RE-REPLY TO LETTER OF 7-30-02/OBTAIN 60 DAY EXTENSION TO FILE ANSWER

Trans Type Incoming Fax

Comments

8-13-02 1 PGS RE-COUNSELL FOR KELLOGG HAS NOT CONTACTED TOMY OR KOYO

Trans Type Incoming Fax

Comments

5-20-03 1 PG RE

Trans Type Incoming Fax

Comments

7-29-03 2 PGS RE-SEND ORIGINAL DEBIT MEMO

Trans Type Incoming Fax

Comments

8/1/03, 1pg, debit memo requested.

Trans Type Incoming Fax

Comments

8-18-03 2 PGS RE-EFRO IN DEBIT MEMO

Trans Type Incoming Fax

Comments

1-21-04 1 pgs RE-DO NOT INTEND TO SEEK FURTHER STAY OF PROCEEDINGS