

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Baxley

Mailed: July 29, 2003

Opposition No. **91/152,594**

TAN PRO, INC.

v.

ST. LOUIS TAN COMPANY, INC.

**Andrew P. Baxley, Interlocutory Attorney:**

This case now comes up for consideration of opposer's motion (filed March 10, 2003) to extend discovery.

Applicant has filed a brief in opposition thereto.

In support of its motion, which was filed on the closing date of discovery, opposer contends that it served discovery requests upon applicant on February 13, 2003, i.e., twenty-five days prior to the close of discovery, and had not yet received responses thereto; that a two-month extension of discovery will enable the parties to present a more complete record to the Board. Accordingly, opposer asks that the close of discovery be extended to May 10, 2003.<sup>1</sup>

---

<sup>1</sup> Opposer is advised that proposed dates should not be included in an unconsented motion to extend. The better practice is to request an extension of a specific length to run from the mailing date of the Board's decision thereon. See TBMP Section 509.02.

**Opposition No. 152,594**

In opposition thereto, applicant contends that opposer has failed to set forth detailed facts constituting good cause and that opposer's failure to take any discovery until the closing month of discovery constitutes mere delay. Accordingly, applicant asks that the Board deny opposer's motion.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is "good cause." See Fed. R. Civ. P. 6(b) and TBMP section 509. The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. See, e.g., *American Vitamin Products, Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313 (TTAB 1992). Nonetheless, a desire to take follow-up discovery by itself does not constitute good cause to extend discovery. If a party believes that issues in a case may require lengthy discovery, it is that party's responsibility to begin taking discovery early in the discovery period so as to allow ample time for follow-up discovery. See *Luehrmann v. Kwik Kopy Corp.*, 2 USPQ2d 1303 (TTAB 1987).

Based on the foregoing, the Board finds that opposer has failed to show good cause for the extension sought. Opposer essentially seeks an extension based solely on its desire to take follow-up discovery, but did not serve its

**Opposition No. 152,594**

first discovery requests until less than a month remained in discovery.<sup>2</sup> If opposer was concerned about presenting a complete record to the Board, it should have began taking discovery much earlier so that it would have ample time to take follow-up discovery.

In view thereof, opposer's motion to extend discovery is hereby denied. Discovery is deemed closed as of March 10, 2003. Trial dates are reset as follows:

Plaintiff's 30-day testimony period to close: **9/29/03**

Defendant's 30-day testimony period to close: **11/28/03**

15-day rebuttal testimony period to close: **1/12/04**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

---

<sup>2</sup> It is noted that opposer did not explain why it did not serve its first discovery requests sooner. Moreover, opposer either knew or should have known at the time it served its discovery requests that the due date for responses thereto was after the close of discovery. See Trademark Rule 2.119(e) and 2.120(a).