

Our Reference: MAT-126

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

In the matter of Application Serial No. 76/083594
Published in the Official Gazette on April 22, 2003
For the mark EVERYDAY LIVING

Martha Stewart Living Omnimedia, Inc.,

Opposer,

v.

Opposition No. 91157919

American Publishing, LLC,

Applicant.

**FIRST REQUEST FOR EXTENSION OF TIME TO RESPOND TO
OPPOSER'S FIRST SET OF DISCOVERY REQUEST**

MS TTAB

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Sir:

The Applicant, American Publishing, LLC, by and through it's attorneys of record, Young & Basile, P.C., hereby requests a 30 day extension of time within which to respond to pposer's First Set of Interrogatories and First Set of Requests to Produce, and in support thereof, states as follows:

1. The present Opposition was initiated on September 22, 2003. The Trademark Trial and Appeal Board granted Opposer two 30 day extensions of time within which to initiate the Opposition. Applicant stipulated to an additional 30 day extension, which was also granted by the Trademark Trial and Appeal Board.

2. Applicant filed its Answer to the Notice of Opposition on November 10, 2003.

3. A communication from the Trademark Trial and Appeal Board dated September 29, 2003, set a discovery period of October 19, 2003 through April 16, 2004.

4. Opposer served Applicant with a First Set of Interrogatories and Requests For Production of Documents and Things ("Discovery Requests") on November 11, 2003. Responses to the Discovery Requests are due to be served on or before December 16, 2003.

5. On December 1, 2003, the undersigned contacted Opposer's counsel by phone to request a 30 day extension of time for responding to the Discovery Requests. The following day, December 2, 2003, the undersigned received a phone call from Opposer's counsel granting the extension. The undersigned subsequently sent an e-mail to Opposer's counsel confirming what the undersigned believed to be the terms of the agreement. In a subsequent e-mail, Opposer's counsel stated that Opposer would be unwilling to grant a 30 day extension without Applicant expressly granting Opposer a reciprocal 30 day extension for responding to discovery in the future. Opposer's counsel was informed that Applicant would be willing to grant the reciprocal extension provided Opposer would stipulate to extending the discovery period if the reciprocal extension resulted in Opposer serving responses to the discovery requests after the close of discovery. Opposer's counsel, however, was not willing to stipulate to such an extension. Copies of the electronic correspondence concerning this matter are attached hereto as Exhibit A.

6. The parties have been unable to reach an agreement regarding extending the time period for Applicant to respond to the Discovery Requests, thereby necessitating the instant request.

7. The additional time is necessary to enable Applicant to adequately research and respond to the Discovery Requests, which has been made more difficult due to the intervening holidays. The request is not intended to unduly delaying these proceedings and will not require the discovery period to be extended.

8. Accordingly, applicant, American Publishing, LLC, respectfully requests a 30 day extension within which to respond to Opposer's First Set of Interrogatories to Applicant American Publishing, LLC, and First Set of Requests for Documents and Things to Applicant American Publishing, LLC. Upon granting the 30 day extension, responses to the Discovery Requests would be due on or before January 16, 2004.

Respectfully submitted,

YOUNG & BASILE, P.C.

By: Daniel A. Checkowsky
Andrew R. Basile, Registration No. 24,783
Daniel J. Checkowsky, Registration No. 51,549
Attorneys for Applicant American Publishing, LLC

YOUNG & BASILE, P.C.
3001 West Big Beaver Rd., Suite 624
Troy, Michigan 48084-3107
Telephone: 248-649-3333
Facsimile: 248-649-3338

Dated: December 15, 2003
DJC/jml

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a correct copy of Defendant American Publishing, LLC's **FIRST REQUEST FOR EXTENSION OF TIME TO RESPOND TO OPPOSER'S FIRST SET OF DISCOVERY REQUEST** was served via first class U.S. Mail on this 15 day of December, 2003 to:

Howard J. Shire
Kenyon & Kenyon
One Broadway
New York, NY 10004
Attorney for Opposer

Daniel A. Checkowsky
Daniel J. Checkowsky

From: Dan Checkowsky
To: Howard, Shire,
Date: 12/2/03 5:50PM
Subject: RE: Martha Stewart Living Omnimedia, Inc. v. American Publishing, LLC; Opposition No. 91157919

Howard,

It appears we should have discussed this issue a little more than we did. Although I believe the "quid pro quo" for your granting us an extension is our stipulating to the 30 day extension within which to file the opposition, I would nevertheless be willing to grant you a 30 extension if you would stipulate to extending the close of discovery, if necessary, in order to allow us time to serve additional discovery requests based on your responses. Although we do have some control in avoiding the risk of not being able to serve any followup discovery requests, it is not completely within our control as you suggest. Certain factors could unforeseeably prolong the time between when we serve our discovery requests and when we receive responses to those requests, such as the filing of discovery motions. Furthermore, since the need to serve followup discovery requests is dependant in large part on the responses we receive, it is impossible to predict how many sets of followup discovery requests may be required. Accordingly, there are situations where, through no fault of our own, the granting of 30 day extension could put us in a position where there is no time left for us to serve any followup discovery requests.

Like I said, I am willing to grant you a 30 day extension in return for your granting us an extension to January 16, 2004 within which to respond to the outstanding discovery requests, provided you agree to stipulate to extending the close of discovery if necessary. I believe such an arrangement would prevent either party from being unnecessarily prejudiced. Please let me know if this is acceptable with you.

Daniel J. Checkowsky
Young & Basile, P.C.
3001 W. Big Beaver Road
Troy, MI 48084-3107
Phone: (248) 649-3333
Fax: (248) 649-3338

>>> "Shire, Howard" <HShire@kenyon.com> 12/02/03 03:21PM >>>
Dan,

As you know, the exclusion mentioned in your email was not discussed by us in either of our conversations this afternoon. We cannot agree to it, since the quid pro quo for our willingness to grant you an extension to January 16, was your agreement to grant us a 30 day extension to respond to discovery requests you serve, if we need it.

It seems to me that the situation you are envisioning is completely within your control to avoid, since you obviously determine when you will serve discovery. You can time the serving of your discovery requests so that even if we ask for an additional 30 days (and the proposed agreement we discussed did not contemplate any greater extension), you will still have time to serve any follow up discovery you might deem appropriate. In addition there is always the possibility of the parties stipulating to extend the close of discovery.

I can assure you that I am not looking to get any sort of tactical advantage from my proposal. I envision it simply as an exchange of courtesies which I have routinely done in the past. Please let me know.

Howard J. Shire
KENYON & KENYON
One Broadway
New York, New York 10004

(212) 908-6205 (telephone)
(212) 425-5288 (fax)
email: hshire@kenyon.com

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-----Original Message-----

From: Dan Checkowsky [<mailto:checkowsky@ybpc.com>]
Sent: Tuesday, December 02, 2003 2:36 PM
To: Shire, Howard
Cc: Andrew Basile; MOLLY MARKLEY
Subject: Martha Stewart Living Omnimedia, Inc. v. American Publishing,
LLC; Opposition No. 91157919

This is to confirm our agreement to extend the time for Applicant to respond to Opposer's First Set of Interrogatories and First Set of Requests for Documents and Things to Applicant American Publishing from December 16, 2003, to January 16, 2004.

During our discussion I indicated that I would be willing to extend the same courtesy of granting you an extension to respond to discovery in the future if necessary. That does not mean, however, that I would necessarily be willing to grant an extension to respond to discovery under all circumstances. For example, I would not be inclined to agree to an extension that would allow you to serve responses after the close of discovery, which would preclude us from serving any follow-up discovery. Just as your granting the present extension will not significantly hinder your client's prosecution of this matter, I would also expect that any extension that we be agree to will also not significantly effect our client's ability to defend this matter.

Please contact me immediately if this does not conform with your recollection of our agreement.

Daniel J. Checkowsky
Young & Basile, P.C.
3001 W. Big Beaver Road
Troy, MI 48084-3107
Phone: (248) 649-3333
Fax: (248) 649-3338

This message was scanned for viruses at Young & Basile, P.C.

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CERTIFICATE OF MAILING AND TRANSMITTAL LETTER

Mail Stop TTAB
Commissioner for Trademarks
PO Box 1450
Alexandria, VA 22313-1450



12-17-2003
U.S. Patent & TMO/TM Mail Rcpt Dt. #22

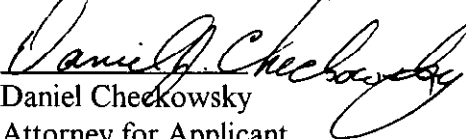
Sir:

Transmitted with this document is a Postcard and a First Request for Extension of Time to Respond to Opposer's First Set of Discovery Request in the above-identified application.

X No fee required

X Please charge any deficiency or credit any excess in the enclosed fees to Deposit Account Number 25-0115.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop TTAB Commissioner for Trademarks, PO Box 1450, Alexandria, VA 22313-1450, on **December 15, 2003**.


Daniel Checkowsky
Attorney for Applicant
Registration No. 51,549
(248) 649-3333

YOUNG & BASILE, P.C.
3001 West Big Beaver Road
Suite 624
Troy, MI 48084-3107