

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

Taylor

Mailed: February 11, 2005

Opposition Nos. 91157178
and 91158299

International Star
Registry of Illinois, LTD

v.

Tonya S. Vaughn

Jyll S. Taylor, Attorney:

This case now comes up for consideration of opposer's motion, filed January 3, 2004, to reset its time to respond to applicant's motion for summary judgment. In support of its motion, opposer argues that because opposer is a family run business, the busy Christmas/Hanukkah selling season impeded its principals' ability to fully assemble records, review supporting materials and provide the level of assistance necessary for the preparation of affidavits to be filed in support of its responsive brief; and that the records to be assembled cover a period over approximately twenty years.

Opposer further argues that the completion of the allowed 56(f) discovery "made it appropriate that there be further follow-up in obtaining documentary[sic] and affidavits to be used as evidence with supporting

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submissions by Opposer"; and that although opposer completed the 56(f) discovery within the allowed time period, certain materials only became available during the time originally set for opposer to file its response brief.

Opposer also argues that the extension is needed due to the limited availability of a witness who had retired and moved to Florida, the busy work schedules of its attorney and principal witness and the limited availability of time during the holidays. Last, opposer states that this is the first request for an extension of time to respond to applicant's motion for summary judgment.

In response, applicant argues that opposer's motion to extend should be denied because it is a routine motion; that opposer's "time crunch" was orchestrated by opposer; that although opposer's counsel and applicant's counsel were in almost daily communication, opposer never mentioned a need for an extension of time to respond to applicant's motion for summary judgment; and that applicant's motion is "peculiarly-timed," having been served on December 30, 2004, "apparently on the good chance Applicant's attorney would not be in the office to prepare and file a response on December 31, 2004."¹

¹ Applicant's counsel is reminded that a brief in response to a motion may be filed up to 15 days from the date of service of the motion (20 days if the service of the motion was made by first class mail, "Express Mail," or overnight courier). See 37 CFR § 2.127.

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In reply, opposer contends that applicant, in its objections to the requested extension, never addressed the grounds asserted as "good cause" by opposer nor asserted any prejudice to it if the requested extension were granted. Opposer also reiterates its position on the motion.²

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).

After carefully reviewing the parties' arguments and given the Board's liberal application of the Rule 6(b) standard, the Board finds the circumstances herein are appropriate for granting opposer's motion to extend. While mindful of applicant's objections, we find that opposer's need for additional time for its principals to review materials necessary for the preparations of affidavits in support of its response, and the limited availability of

² The parties also advanced argument relating to the merits of the motion for summary judgment. These arguments are not relevant to the motion to extend and have not been considered.

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opposer's witnesses and counsel during the holiday season is good cause for the requested extension.

Moreover, the Board finds that there is no evidence of negligence or bad faith on the part of opposer; that opposer has not abused the privilege of extensions, this being the first request to extend its time to respond to the motion for summary judgment; and that applicant has pointed to no prejudice that it would suffer if the motion to extend were granted.

In view thereof, opposer's motion to extend its time to respond to the motion for summary judgment is granted.³ Accordingly, opposer is allowed until **twenty days** from the mailing date of this order to file its response to applicant's motion for summary judgment. In light of applicant's objections, opposer is advised that no further extensions of its time to respond to applicant's motion for summary judgment will be permitted in the absence of an agreement between the parties or a showing of extraordinary circumstances.

Proceedings herein remain otherwise suspended.

³ It is noted that opposer requested an extension until January 25, 2005 to respond to applicant's motion. While the Board attempts, where possible, to notify the parties of its decision on an unconsented motion to extend prior to the expiration of the enlargement sought, the Board is under no obligation to do so, and in many cases cannot. Therefore, it is preferable, where an unconsented motion seeks an extension of a prescribed period, that the motion request that the new period be set to run from the date of the Board's decision on the motion.