

ESTTA Tracking number: **ESTTA94827**


Filing date: **08/16/2006**

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

Proceeding	91158743
Party	Defendant American Promotional Events, Inc. American Promotional Events, Inc. 4511 Helton Drive Florence, AL 35630
Correspondence Address	RALPH W KALISH JR BLACKWELL SANDERS PEPER MARTIN 720 OLIVE ST sUITE 2400 ST LOUIS, MO 63101 rsifton@blackwellsanders.com
Submission	Motion to Extend
Filer's Name	R. Prescott Sifton, Jr.
Filer's e-mail	rsifton@blackwellsanders.com
Signature	/R. Prescott Sifton, Jr./
Date	08/16/2006
Attachments	SDOC5767.pdf (5 pages)(673653 bytes)

CERTIFICATE OF MAILING

I hereby certify that this correspondence is addressed to: Trademark Trial and Appeal Board, Madison West 9th Floor, 600 Dulany Street, Alexandria, VA 22314, and is being deposited with the United States Postal Service Express Mail on August 16, 2006.



Attorney

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

GOLDEN GATE FIREWORKS, INC.)	
)	
Opposer,)	Opposition No. 91158743
)	
vs.)	Serial No. 78/206944
)	
AMERICAN PROMOTIONAL)	Mark: IF IT'S NOT TNT, IT'S
EVENTS, INC.)	NOT FIREWORKS
)	
Applicant.)	

**APPLICANT AMERICAN PROMOTIONAL EVENTS, INC.'S MOTION TO EXTEND
TIME TO RESPOND TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

Applicant American Promotional Events, Inc. ("TNT"), by and through its undersigned attorneys and pursuant to TBMP § 509.01(A) and 37 CFR § 2.116(a), moves for an enlargement of time of an additional thirty (30) days in which to file its opposition to oppose Golden Gate Fireworks, Inc.'s ("Black Cat") Motion for Summary Judgment. In support thereof, TNT states as follows:

1. This is a trademark opposition matter in which TNT, a fireworks wholesaler and retailer, seeks to register the trademark IF IT'S NOT TNT, IT'S NOT FIREWORKS. Black Cat, one of TNT's largest competitors, opposes the registration.

2. Black Cat purportedly served its Motion for Summary Judgment by first class mail on July 19, 2006, the day before its testimonial period was to begin. Pursuant to TBMP § 502.02 and 37 CFR § 2.27(e)(1), TNT has thirty (30) days to file its opposition, plus an additional five (5) days for service by mail pursuant to TBMP § 113.05. Accordingly, TNT's opposition is presently due on August 23, 2006.

3. Black Cat's Motion for Summary Judgment is extensive. It consumes 23 pages of text, makes 51 separate assertions of undisputed material fact, attaches 29 exhibits nearly an inch thick in the aggregate and contains 56 footnotes citing to 34 different cases. The Motion quite likely took months to prepare, as manifested by Golden Gate's counsel taking the maximum amount of time to prepare it. Under TBMP § 528.02, the Motion had to be filed before Golden Gate's testimony period began.

4. Despite its best efforts to prepare a timely, comprehensive response to Black Cat's motion package, due to the intricate issues of fact and law involved, the extensiveness of Black Cat's motion, the difficulty of coordinating with multiple witnesses whose testimony is needed to respond to the Motion, the difficulty of procuring additional data and evidence to counter Black Cat's factual assertions and the general press of business, TNT and its counsel find themselves unable to prepare a satisfactory response in the limited time provided.

5. In the interests of specificity, on the date Black Cat served its motion, July 19, TNT was just coming off the peak 4th of July fireworks selling season, the busiest time of its year. TNT's responsiveness, specifically that of its in-house General Counsel Kristina P. Tompkins, who is primarily responsible for gathering information, evidence and testimony within TNT, has been considerably compromised by the timing of Black Cat's Motion. Further, at the time Black Cat's motion was filed, TNT consulting expert witness David Opperman was in

the midst of a three-week long business trip that precluded him from being in contact with TNT's attorneys.

6. Furthermore, the undersigned is in the midst of preparation for two trials in the month of September and, until last week, was preparing three. These include the cases of *Commonwealth Land Title Ins. Co. v. One City Centre Investments, LLC, et al.*, No. 03 CC – 001443, pending in the Circuit Court of St. Louis County, Missouri before the Honorable Colleen Dolan, set for a weeklong jury trial beginning September 11, 2006 and *Glasgow Enterprises, Inc. v. Joyce V. Lee, et al.*, No. 04CC-004811, pending in the Circuit Court of St. Louis County, Missouri before the Honorable Thea Sherry, set for bench trial on September 27, 2006. Only last week the case of *Catherine Lasich v. Fairmount Park, Inc., et al.*, No. 05-L-00573, pending in the Circuit Court of Madison County, Illinois before the Honorable Donald Webber, was resolved at mediation in advance of a jury trial setting for September 18, 2006. Between now and the current August 23 deadline, the undersigned has motion response deadlines in the cases of *Eugene Keith, et al. v. Jim Thompson, et al.*, No. 4:05 CV 02268 HEA (motion to quash third party subpoena), and *Jazz Cruises, LLC, et al. v. Mark Vrabel, et al.*, No. 4:06 CV 0397 JCH (motion to dismiss or sever), both of which are pending in the United States District Court for the Eastern District of Missouri, as well as two document production deadlines. The undersigned has also been in the midst of preparation for a preliminary injunction hearing on August 29, 2006 in the case of *Incline Village Board of Trustees v. Frank Ziener, et al.*, No. 06BB – CC 00064, the Honorable Keith Sutherland presiding.

7. On August 14, counsel for TNT called counsel for Black Cat and requested a thirty (30) day extension. Counsel responded on the morning of August 16 that Black Cat itself had refused to give its attorneys authority to agree to an extension.

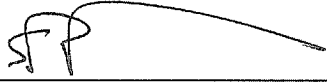
8. TNT's request for additional time is not necessitated by its own lack of diligence or unreasonable delay. Indeed, despite the obstacles mentioned above, TNT has made substantial progress in digesting Black Cat's Motion and in formulating its response. The work performed thus far has consumed dozens of hours of attorney and expert time, but much more time is needed in order to fully and adequately address the issues raised by Black Cat's motion.

9. With TNT's requested extension, its response to Black Cat's motion for summary judgment will be due on September 22, 2006. This request for additional time is made in the interests of justice, and will not unfairly prejudice any party. It is in the best interests of both parties and of the general public that the important issues presented in this opposition be adjudicated fairly on the merits, and not on the basis of a lopsided allocation of preparation to one side (Black Cat) over the other (TNT).

WHEREFORE, applicant American Promotional Events, Inc. respectfully requests that this Board issue its Order granting it an additional thirty (30) days, to and including September 22, 2006, in which to respond to opposer Golden Gate Fireworks, Inc.'s Motion for Summary Judgment, and granting TNT such other and further relief as the Board deems proper and appropriate under the circumstances of this case.

BLACKWELL SANDERS PEPER MARTIN LLP

Dated: August 16, 2006

By:  _____

Ralph W. Kalish, Jr., Esq.
Michael R. Annis, Esq.
R. Prescott Sifton, Jr., Esq.
720 Olive Street, Suite 2400
St. Louis, Missouri 63101
Telephone: (314) 345-6000
Facsimile: (314) 345-6060

Attorneys for Applicant

CERTIFICATE OF SERVICE

This is to certify that the undersigned has served a true and correct copy of the within and foregoing Applicant's Motion to Compel regarding Opposition No. 91158743 upon counsel for Respondent, by United States Postal Service Express Mail, in a properly addressed envelope, with adequate postage affixed thereon, this 16th day of August, 2006, addressed as follows:

Richard P. Stitt, Esq.
SHUGHART THOMSON
& KILROY, PC
32 Corporate Woods
Suit 1100
9225 Indian Creek Parkway
Overland Park, KS 66210



Attorney