

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Winter/tlc

Mailed: February 11, 2010

Opposition No. 91167232

Hallmark Licensing, Inc.

v.

Diastar, Inc.

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

The Board notes opposer's consented motion filed January 25, 2010 to extend its testimony period for ninety days or until April 23, 2010. The basis for this motion to extend time, as it was for the virtually identical motion to extend time filed over one year ago on January 26, 2009, is that the *"parties are unable to complete testimony during the assigned period because applicant's attorney has so far been unable to contact applicant in order to respond to the interrogatories that were propounded by opposer during the discovery period."* The Board also notes that this proceeding has been pending since October 31, 2005; that the parties have sought and been granted numerous extensions of time or suspensions of the proceeding to

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negotiate settlement of this case; and that opposer filed the subject motion on the last day of the testimony period, as previously reset.

Inasmuch as the parties are apparently no longer discussing settlement of this matter, and in view of opposer's failure to otherwise complete its discovery over the past year or to explain why this proceeding is in the same status (in regard to discovery and testimony) as it was one year ago, the Board finds that opposer has not shown good cause for the requested ninety-day extension of time. *See* Fed. R. Civ. P. 6(b)(1). *See also* *Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758 (TTAB 1999). Opposer's sparse motion contains very little information upon which the Board could find good cause. *Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479 (TTAB 2000); *Instruments SA Inc. v. ASI Instruments Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999) (cursory or conclusory allegations that are denied unequivocally by the non-movant, and that are not otherwise supported by the record, will not constitute a showing of good cause); and *Luehrmann v. Kwik Kopy Corp.*, 2 USPQ2d 1303 (TTAB 1987) (mere unexplained delay in initiating action in an affected time period does not constitute good cause).

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Nonetheless, inasmuch as applicant has agreed to the extension of time, the consented motion is granted to the extent that the testimony periods in this proceeding are reset for a period of forty-five days from the mailing date of this order, as indicated below.¹

No further extension or suspension of this proceeding will be allowed, even if consented to by the adverse party, unless the party that submits another motion for an extension of time or suspension provides a showing of good cause, which must comprise a detailed status report on the status of opposer's previously propounded discovery and/or the progress of the parties' settlement negotiations, if applicable, including when the last settlement proposal was sent, by whom, and when a response is expected, a recitation of the issues that have been resolved since the commencement of this proceeding, a list of issues that remain to be resolved, and a timetable for resolution. Confidential information may be so designated and will be barred from public viewing.

Trial Dates Reset

The testimony periods are reset as follows:

¹ The Board reminds opposer that it brought this case and, in so doing, took responsibility for moving forward on the established schedule. See *Atlanta-Fulton County Zoo, Inc. v. DePalma*, 45 USPQ2d 1858, 1860 (TTAB 1998).

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30-day testimony period for party in
position of plaintiff to close: **March 28, 2010**

30-day testimony period for party in
position of defendant to close: **May 27, 2010**

15-day rebuttal testimony period for
plaintiff to close: **July 11, 2010**

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. See Trademark
Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark
Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An
oral hearing will be set only upon request filed as
provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.
