

ESTTA Tracking number: **ESTTA306987**

Filing date: **09/18/2009**

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

Proceeding.	91167354
Applicant	Plaintiff May Department Stores International, Inc
Other Party	Defendant Luxi Group, Inc., assignee of Odimo Acquisition Corporation

Motion for an Extension of Discovery or Trial Periods With Consent

The Close of Discovery is currently set to close on 09/19/2009. May Department Stores International, Inc requests that such date be extended for 90 days, or until 12/18/2009, and that all subsequent dates be reset accordingly.

Discovery Period to Close : 12/18/2009
 Thirty-day testimony period for party in position of plaintiff to close : 03/18/2010
 Thirty-day testimony period for party in position of defendant to close : 05/17/2010
 Fifteen-day rebuttal testimony period to close : 07/01/2010

The grounds for this request are as follows:

- *Parties are unable to complete discovery/testimony during assigned period*
- *The parties and respective counsel are mindful of the Board's decision to provide additional extensions of time only upon a showing of extraordinary circumstances. The parties believe that one additional extension of time for 90 days is appropriate when the history of this dispute is viewed in context. First, the Board is advised that the parties have now tentatively agreed on a final form of Settlement Agreement, which will resolve this dispute and obviate the need to continue with the Proceeding. This final form remains subject to final execution by the parties, but counsel for both sides have a good faith belief that it will be acceptable to their respective clients. An extension of time is required to allow the parties to put the Agreement in a final form for execution, and to arrange for final review and assuming appropriate, execution. Second, much of the time which caused this rather long negotiation was due to circumstances which are themselves extraordinary. Specifically, during this Proceeding, the original Petitioner, May Department Stores International sold its assets to an unrelated entity, Federated Department Stores. That transaction included marks and businesses beyond the marks and business which are the subject matter of this Petition, and also required changing counsel. Also, during this Proceeding, Odimo, the original owner of the Application which was the subject of the Proceeding, sold its assets to Luxi, and similarly changed counsel. The parties report as follows: The attorneys believe that they have agreed on a form of Agreement which will be acceptable to their clients, and that no additional requests for extension of time will be required. The counsel further believe that the Agreement will be finalized within approximately one week. Since there is a theoretical possibility that the Settlement Agreement will be rejected, the Parties hereby request a 90 day extension of all dates, so that if the Parties must litigate, they will be in a position to effectuate Discovery without the need for any additional requests for an extension of dates. Respectfully submitted.*

May Department Stores International, Inc has secured the express consent of all other parties to this proceeding for the extension and resetting of dates requested herein.

May Department Stores International, Inc has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,

/Chester Rothstein/

Chester Rothstein

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