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

Proceeding	91178731
Party	Plaintiff Trademark Management Company
Correspondence Address	Timothy P. Fraelich Jones Day North Point, 901 Lakeside Avenue Cleveland, OH 44114 UNITED STATES clkiedrowski@jonesday.com, tfraelich@jonesday.com, pcyngier@jonesday.com
Submission	Motion to Extend
Filer's Name	Carrie L. Kiedrowski
Filer's e-mail	clkiedrowski@jonesday.com, tfraelich@jonesday.com, pcyngier@jonesday.com
Signature	/Carrie L. Kiedrowski/
Date	06/18/2008
Attachments	Motion to Extend Discovery and Trial Periods.PDF (5 pages)(151258 bytes)

settlement. Applicant declined Opposer's proposed terms and Opposer then served written discovery and notice of a deposition pursuant to Rule 30(b)(6). Applicant then served its written discovery. Counsel for Opposer and Applicant exchanged correspondence regarding scheduling depositions and exchanged written discovery responses in January and February, 2008.

On February 4, 2008, counsel for Opposer contacted counsel for Applicant indicating that the number of interrogatories, including subparts, served upon Opposer greatly exceeded the number permitted by the Federal Rules of Civil Procedure and requesting that counsel for Applicant revise and narrow the number of interrogatories. Counsel for Applicant indicated by phone that he would review the interrogatories and respond to Opposer's request. On February 12, 2008, Opposer received a letter from Applicant failing to narrow the number of interrogatories but proposing that the parties engage in settlement discussions and assuring Opposer that he wanted to work together so that discovery could be conducted "smoothly and efficiently."

In response to the February 12, 2008 letter, the need to exchange documents, and the need to discuss limiting Applicant's interrogatories, the parties agreed to a thirty (30) day extension of the discovery and trial periods. A consented motion was filed on March 10, 2008. The parties later began to engage in renewed discussions of possible settlement terms on or around April 2, 2008 and counsel for Opposer filed a consented motion on April 3, 2008. Thereafter, the parties' counsel returned to consult with their respective clients for further exploration and investigation of the facts. Upon Opposer's discovery, research and collection of additional information that would likely impact the status of settlement discussions, counsel for Opposer contacted counsel for Applicant on June 13, 2008 and requested a sixty (60) day extension of the discovery and trial periods. Although outstanding discovery matters have not

been attended to, including the need for the initiation and completion of document collection, the narrowing of Applicant's interrogatories and the depositions that follow the receipt of such information. Applicant respectfully declined this request. Opposer only received notification of Applicant's refusal on the last day of the current discovery period which then precipitated the need for the instant motion.

II. ARGUMENT

Under Fed. R. Civ. P. (6)(b)(1) and TBMP Section 509, the standard for allowing an extension of time is good cause. Good cause will ordinarily be found so long as the moving party has not been guilty of negligence or bad faith, and the privilege of extensions is not abused. *American Vitamin Products Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992). In *American Vitamin*, the Board granted an extension of time for ten days based on petitioner's *single* reason for needing an extension – petitioner was “continuing to gather information needed to respond to respondent's discovery requests.” *Id.* at 1314. Moreover, this was the *third* request by petitioner. *Id.*

This motion is filed in good faith and not for purposes of delay. Opposer submits that an extension of time is warranted in this case because of the above-referenced facts. This is not a case where the privilege of extensions has been abused. Indeed, the parties have filed consented extensions of time in order to facilitate settlement discussions. Thus, proceedings have not been delayed or postponed for any improper or negligent reason.

Moreover, this motion was necessitated by Opposer's late discovery that Applicant is unwilling to extend the discovery and trial periods, despite the unresolved Rule 30(b)(6) deposition details or the parties' exchange of discovery responses. Opposer believes, in good faith, that it should be afforded the opportunity to conclude all outstanding discovery matters and believes that no more than sixty (60) days is required to complete such tasks.

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III. CONCLUSION

Accordingly, Opposer submits that good cause has been shown, and respectfully requests that the Board grant its motion to extend the discovery and testimony periods for sixty (60) days from the date of the Board's order on this motion.

Date: June 18, 2008

Respectfully submitted,



Timothy P. Fraelich
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
(216) 586-3939 (Phone)
(216) 579-0212 (Fax)

Carrie L. Kiedrowski
JONES DAY
1420 Peachtree St., N.E.
Suite 800
Atlanta, Georgia 30309-3053
(404) 521-3939 (Phone)
(404) 581-8330 (Fax)

