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

Proceeding	91179578
Party	Defendant Blue Cross and Blue Shield of Michigan
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Submission	Motion to Extend
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Date	12/28/2007
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BLUE CROSS AND BLUE SHIELD OF MICHIGAN ) ) Applicant, ) ) v. ) ) "WEIGH TO GO" WEIGHT LOSS CENTERS ) ) Opposer. ) ) _____ /	)	Opposition No. 91179578 Application Serial No. 78/544,834 Mark: WEIGH TO GO BCN & DESIGN
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**APPLICANT'S UNCONSENTED MOTION FOR EXTENSION OF TIME TO  
ANSWER OR OTHERWISE PLEAD, AND BRIEF IN SUPPORT OF MOTION**

Applicant, Blue Cross and Blue Shield of Michigan, by and through its attorneys, Rader, Fishman & Grauer PLLC, pursuant to TBMP § 509, respectfully request that the Board extend the deadline for Applicant to answer the Notice of Opposition in the instant opposition proceeding for a period of 15 days from the date of the Board's decision. Applicant sought Opposer's consent to a further extension of time to answer but did not receive a response by the time of the filing of the instant motion.

**I. Statement of Facts**

Application Serial No. 78/544,834 for WEIGH TO GO BCN & DESIGN was published for opposition on May 22, 2007. Opposer requested, and was granted, an extension of time to oppose, which extended the deadline to oppose to September 19, 2007. The notice of opposition was filed on September 19, 2007.

Prior to the filing of the opposition, the parties had been discussing an amicable resolution to the instant dispute. After the institution of the opposition, in view of these discussions, Applicant requested, and was granted, two extensions of time to answer the Notice of Opposition, which extended the deadline to answer to December 28, 2007. Opposer consented to both extensions.

Drafts of an agreement have been exchanged between the parties, and the parties agree on the major terms of the agreement. In view of the ongoing and productive settlement discussions, Applicant's counsel requested Opposer's consent to a further extension of time to answer the Notice of Opposition by

e-mail on December 27, 2007 to Opposer's counsel. As per prior practice, Applicant's counsel expected Opposer would consent to the extension.

Applicant's counsel did not receive a response to the request by the deadline to timely answer the Notice of Opposition. Applicant's counsel was also unable to reach Opposer's counsel by telephone. Further, Applicant's counsel was unable to contact Applicant to determine if Applicant wished to file an answer to the Notice of Opposition. Due to the holiday schedule, and especially between two holiday weekends, counsel for Applicant was on a reduced work schedule. Presumably for the same reason, Opposer's counsel and Applicant were difficult to reach during this time period.

Applicant therefore files the instant motion.

## **II. Argument**

The standard for allowing an extension of a prescribed period prior to the expiration of the period is "good cause." TBMP §509 and Fed.R.Civ.P. 6(b). The discovery period may be extended upon stipulation of the parties approved by the Board, upon motion granted by the Board, or by order of the Board. 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. DowBrands Inc.*, 22 U.S.P.Q.2d 1316 (TTAB 1992).

Applicant submits that it has demonstrated good cause for the requested extension. Settlement negotiations had been ongoing prior to and subsequent to the institution of the opposition proceeding. Applicant reasonably expected Opposer to consent to a further extension of time to answer, in that settlement discussions had been ongoing prior to the time the opposition was instituted, in view of the previous consent to the extensions of time to answer and the cordial relationship between the parties and their counsel.

Moreover, Applicant has not been guilty of negligence or bad faith in requesting the extension, and it has not abusing the privilege of extensions. The settlement discussions are ongoing between Applicant and Opposer, and Applicant is optimistic that the parties will be able to reach an amicable resolution to the instant opposition, thereby avoiding the need to formally commit both parties to the

opposition by filing an answer. Moreover, the 15 day extension that Applicant has requested is eminently reasonable.

Applicant also notes that it is the Board's policy to decide cases on their merits, and in this regard, generally resolves doubts on the matter in favor of the defendant. TBMP § 313.02. To enter a default judgment for failure to timely file an answer would render a decision based on a technicality.

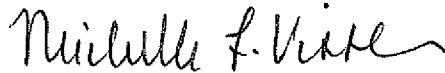
Pursuant to TBMP Section 509.02, assuming the Board grants the instant motion, Applicant requests that the deadline to answer the Notice of Opposition be set for 15 days from the grant of the motion. Should the Board of Opposer believe that an extension of the discovery and testimony periods is necessary to accommodate this extension, Applicant will consent to such an extension.

**III. Conclusion**

In accordance with the foregoing, Applicant requests that the instant motion be granted.

Respectfully submitted,

Date: December 28, 2007



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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing *Applicant's Unconsented Motion for Extension of Time to Answer or Otherwise Plead, and Brief in Support of Motion* upon Opposer by causing a true and correct copy thereof to be sent on by first class mail, postage prepaid to:

Decker Sachse  
Falkin + Sachse, PLLC  
2828 Routh Street, 5th Floor  
Dallas, Texas 75201

Dated: December 28, 2007



Michelle L. Visser

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