

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

vw

Mailed: October 15, 2008

Opposition No. 91185105

Mignon Fogarty, Inc. and  
Macmillan Holdings, LLC

v.

Joel Avery

Jennifer Krisp, Interlocutory Attorney:

This proceeding is before the Board for consideration of applicant's motion (filed September 30, 2008) for a 60-day extension of time to answer the notice of opposition. The motion is fully briefed. On October 14, 2008, the interlocutory attorney held a telephone conference with the parties to rule on applicant's motion. Participating were Mark Lerner on behalf of opposer, and applicant Joel Avery, pro se.

Opposer's response filed October 6, 2008 fails to indicate proof of service thereof, as required by Trademark Rule 2.119. All parties to proceedings before the Board are required to comply in full with the requirements of Trademark Rule 2.119, which governs service of all papers filed with the Patent and Trademark Office. The Board will decline to consider any future filing by either party, whether represented by counsel or not, which does not bear proper proof of service thereof. To expedite this matter, a

copy of opposer's October 6, 2008 response is forwarded to applicant with his copy of this order.<sup>1</sup>

By operation of the Board's September 3, 2008 order, the due date for applicant's answer to the notice of opposition was reset to October 3, 2008. Inasmuch as applicant filed his request for an extension of time prior to the expiration of the period as previously reset, applicant need only show good cause for the requested extension. See TBMP § 509.01 (2d ed. rev. 2004). A party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor. See TBMP § 509.01(a) (2d ed. rev. 2004).

The Board generally deems it advantageous for the parties before it to have benefit of legal counsel, and applicant's filings in this proceeding have thus far demonstrated continual efforts to secure counsel. In view thereof, the Board finds that applicant's motion is not necessitated by a lack of diligence or unreasonable delay on his part, and that applicant has demonstrated good cause for the requested extension.

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<sup>1</sup> The parties are also directed, as appropriate, to Trademark Rule 2.127, which sets forth the requirements for all motions filed with the Board.

Accordingly, applicant's motion for a 60-day extension of time in which to file an answer to the notice of opposition is granted. In view thereof, time to answer, conferencing, discovery, disclosure and trial dates are reset as follows:

Time to Answer	12/14/2008
Deadline for Discovery Conference	1/13/2009
Discovery Opens	1/13/2009
Initial Disclosures Due	2/12/2009
Expert Disclosures Due	6/12/2009
Discovery Closes	7/12/2009
Plaintiff's Pretrial Disclosures	8/26/2009
Plaintiff's 30-day Trial Period Ends	10/10/2009
Defendant's Pretrial Disclosures	10/25/2009
Defendant's 30-day Trial Period Ends	12/9/2009
Plaintiff's Rebuttal Disclosures	12/24/2009
Plaintiff's 15-day Rebuttal Period Ends	1/23/2010

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. Trademark Rule 2.125.

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