

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

Mailed: April 19, 2012

Opposition No. **91185261**

Opposition No. **91186841**

American Cigarette Company,
Inc. and Smoker's Best Group,
LLC (joined as a party
plaintiff)

v.

N.V. Sumatra Tobacco Trading
Company

Cancellation No. **92052621**

N.V. Sumatra Tobacco Trading
Company

v.

American Cigarette Company,
Inc. and Smoker's Best Group,
LLC (joined as a party
defendant)

Andrew P. Baxley, Interlocutory Attorney:

A document reflecting the assignment of Registration No. 2972594, the pleaded registration in the above-captioned oppositions and the involved registration in the above-captioned cancellation, from American Cigarette Company, Inc. ("American") to Smoker's Best Group, LLC ("Smoker's") was executed during the pendency of these proceedings and is recorded with the USPTO's Assignment Branch at Reel 4665, Frame 0479. Accordingly, Smoker's is joined as a party

plaintiff in the above-captioned oppositions and as a party defendant in the above-captioned cancellation. See Patent and Trademark Office Rule 3.73(b); TBMP Section 512.01 (3d ed. 2011).

On December 1, 2011, N.V. Sumatra Tobacco Trading Company ("Sumatra") filed a motion for summary judgment in the above-captioned cancellation proceeding. On December 28, 2011, American filed a consented motion to extend its time in which to respond thereto. The Board, in a January 19, 2012 order, the Board granted that motion, allowing American until January 30, 2012 to file a brief in response to Sumatra's motion for summary judgment.

On January 30, 2012, American filed a second motion to extend its time in which to respond to Sumatra's motion for summary judgment, to which Sumatra filed a brief in opposition. American's attorneys, on February 14, 2012, filed requests to withdraw as counsel in these consolidated proceedings, which the Board denied without prejudice in a February 21, 2012 order.

On February 23, 2012, American's attorneys filed a renewed request to withdraw, which the Board granted in a March 2, 2012 order. In that order, the Board also granted American's motion to extend time to respond to Sumatra's motion for summary judgment to the extent that the Board stated that it would reset American's time to respond to the

motion for summary judgment upon resolution of the status of American's representation herein.

On April 2, 2012, American's new attorneys entered an appearance and filed a third motion to extend American's time to respond to the motion for summary judgment. The third motion to extend has been fully briefed.

In view of the entry of appearance by American's new attorneys nearly four years after the commencement of the parent case in these consolidated proceedings, the Board finds that American's new attorneys should be allowed some additional time to be brought up to speed on the record in these proceedings. See Fed. R. Civ. P. 6(b)(1)(A); TBMP Section 509.01(a). However, the Board agrees with Sumatra that it would be excessive to grant the full extension to July 31, 2012 that American seeks.

Moreover, in the third motion to extend, American seeks additional time in which to file a motion for leave to reopen discovery, if necessary. However, any motion for leave to take discovery prior to responding to a motion for summary judgment under Fed. R. Civ. P. 56(d) was due herein by January 4, 2012; the time for filing a Rule 56(d) motion will not be reopened.¹ See Fed. R. Civ. P. 56(d); Trademark Rule 2.127(e)(1); TBMP Section 528.06.

¹ Accordingly, the Board will not consider any motion for Rule 56(d) discovery from American and Smoker's in connection with Sumatra's motion for summary judgment.

In view thereof, the motion to extend is granted to the extent that American and Smoker's are allowed until sixty days from the mailing date set forth in this order to file a brief in response to the motion for summary judgment. Sumatra's reply brief in support of the motion for summary judgment is due in accordance with Trademark Rules 2.119(c) and 2.127(e)(1).²

Proceedings herein otherwise remain suspended in accordance with the Board's December 9, 2011 order.

² By the expiration of the extension granted by this order, Sumatra's motion for summary judgment will have been pending for more than six months. Accordingly, American and Smoker's will not be allowed any further extensions of time to respond to the motion for summary judgment without either Sumatra's consent or a showing of extraordinary circumstances.