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

Proceeding	91188294
Party	Plaintiff European Wax Center, Inc.
Correspondence Address	David A. Gast Malloy & Malloy, PA 2800 SW 3rd Avenue Miami, FL 33129 UNITED STATES dgast@malloylaw.com, litigation@malloylaw.com
Submission	Motion to Extend
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Date	08/28/2009
Attachments	Extension Discovery 91188294.pdf (5 pages)(18580 bytes)

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

In the matter of Trademark Application Serial No. 77/497,861
For the mark "THE SECRET IS OUR WAX"

EUROPEAN WAX CENTER, INC. Opposer, vs. UKW HOLDING COMPANY, Applicant.	) Opposition No. 91188294

OPPOSER'S MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO APPLICANT'S DISCOVERY

COMES NOW the Opposer, European Wax Center, Inc. ("EWC" or "Opposer"), and moves for an enlargement of time in the amount of fourteen (14) days, and until September 11, 2009, to respond to Applicant UKW Holding Company's ("UKW" or Applicant) discovery, the grounds for which are as follows:

1. Opposer and Applicant are involved in two opposition proceedings. The first proceeding (Opposition No. 91188571) involves the mark THE SECRET IS IN THE WAX, and the second, this proceeding, involves the mark THE SECRET IS OUR WAX. Applicant served discovery for both proceedings upon Opposer at the same time. The discovery consisted of a set of interrogatories directed to THE SECRET IS IN THE WAX, and a set of requests for admissions and requests for production of documents and things

for this proceeding, THE SECRET IS OUR WAX.

2. Specifically, on June 24, 2009, Applicant served upon Opposer Applicant's First Request for Admissions to Opposer ("Admissions") and Applicant's First Request to Opposer for Production of Documents and Things ("Requests").

3. Thereafter, Opposer requested and received a thirty (30) day extension to respond to the discovery, thereby the discovery is due on August 28, 2009.

4. In a good faith effort to resolve this matter, Opposer contacted counsel for Applicant, who requested more information about the grounds for the extension. Said information was immediately provided via email, however, counsel ultimately never responded to either to consent to the extension or reject it.

5. Opposer maintains numerous grounds which justify the brief extension sought herein.

6. Opposer learned for the first time that Applicant claims to have served another discovery document upon Opposer, namely, Applicant's First Set of Interrogatories to Opposer ("Interrogatories"). In Opposer's request for an extension, Opposer requested confirmation that Opposer only served two discovery documents in this proceeding, and one document in the other.

7. Opposer noted that it was odd for Applicant to serve

Requests and Admissions in this proceeding, while serving only interrogatories in the other proceeding. All the same, Opposer diligently reviewed all mail to confirm that no other documents were received by the office.

8. In reply to the email, Applicant indicated that there was more. On or about 5:14 p.m. on August 28, 2009, Applicant transmitted the missing discovery documents to the undersigned. As a result of the late receipt of said documents, Opposer is unable to review, answer, and object, where appropriate, to the interrogatories. Further, Opposer is unavailable for review of the interrogatories at this eleventh hour.

9. While Applicant has indicated that the Interrogatories in this case are virtually identical to the ones served in the other proceeding, it still takes time to review the documents, compare them, and analysis whether a response would be different. Thus, the brief extension sought herein is necessary in order for Opposer to respond.

10. With respect to the Admissions and Requests, Opposer likewise requests additional time to respond. Counsel for Opposer, David A. Gast, has been out of town for the last week and has been unable to coordinate the final review and production of documents by the discovery deadline.

11. Similarly, Opposer has not had the opportunity to finalize the discovery responses and thereby requests a two week

extension, until September 11, 2009, to respond.

12. In an effort to be efficient, Opposer requests this brief extension to ensure that the discovery is due on the same day. As such, Opposer will be seeking a similarly extension in the companion proceeding, based on similar grounds.

13. The extension is not sought for purposes of delay and has been unavoidable.

WHEREFORE, Opposer requests a brief fourteen (14) day enlargement of time to respond to Applicant's discovery Admissions, Interrogatories, and Requests.

Dated: August 28, 2009

By:/s/David A. Gast_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Enlargement of Time was served upon the following by United States mail, postage pre-paid this 28th day of August, 2009.

Lisa N. Kaufman, Esq.
Frank Herrera, Esq.

ROTHSTEIN ROSENFELDT ADLER
401 East Las Olas Blvd. Suite 1650
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Respectfully submitted,

By:/s/David A. Gast_____
David A. Gast
Florida Bar No. 176,567

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