ESTTA Tracking number: **ESTTA359508**

Filing date: **07/22/2010**

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

Proceeding	91191556
Party	Plaintiff Archie Comic Publications, Inc.
Correspondence Address	Jess M. Collen Collen IP The Holyoke-Manhattan Building, 80 South Highland Avenue Ossining, NY 10562 UNITED STATES jslocum@collenip.com, mwagner@collenip.com
Submission	Motion to Extend
Filer's Name	Thomas P. Gulick
Filer's e-mail	tgulick@collenip.com, ogelber@collenip.com, jslocum@collenip.com, mwagner@collenip.com, docket@collenip.com
Signature	/Thomas P. Gulick/
Date	07/22/2010
Attachments	J859 Opposer's Emergency Motion to Extend Discovery.pdf (7 pages)(242434 bytes)

ATTORNEY DOCKET NO. J859

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

Archie Comic Publications, Inc., Opposer, v. Betty Rides, Inc., Applicant.	Opposition No.: 91191556 Serial No.: 77/456,294 Mark: BETTY RIDES

OPPOSER'S EMERGENCY MOTION TO EXTEND DISCOVERY AND ALL SUBSEQUENT DATES

Opposer Archie Comic Publications, Inc. ("Opposer" or "ACP") hereby moves the Trademark Trial and Appeal Board for a sixty day extension of the Discovery period and all subsequent dates pursuant to 37 C.F.R. § 2.120(a). This is Opposer's first motion for an extension of this deadline. Opposer sought Applicant's consent for this motion through written correspondence and a telephone call with Applicant's counsel, but Applicant refused to grant its consent, except to the extent that any extension would apply only for the purposes of Applicant's deposition of Opposer.

This Motion is not filed with the intent to delay these proceedings, but merely to allow the parties to complete all discovery, including discovery depositions, within the discovery deadline.

FACTUAL BACKGROUND

Opposer previously granted Applicant three thirty day extensions of time to Answer the Notice of Opposition in this proceeding. As a result of these extensions, Discovery opened in this matter on January 26, 2010. The Parties have propounded discovery requests and served their respective discovery responses.

Applicant and Opposer have exchanged deficiency letters on July 14, 2010 and July 15 and 20, 2010, respectively. Applicant has further served its Second Set of Interrogatories, Second Set of Requests for Admission and Second Set of Requests for Production of Documents on July 14, 2010.

Both Parties have outstanding Rule (30)(b)(6) Notices of Deposition. Applicant served its Notice of Deposition of Opposer on May 26, 2010. Counsel for Opposer promptly contacted Applicant to advise that ACP was unavailable for the noticed deadline. Counsel for Opposer sought dates from ACP for deposition, but was unable to ascertain dates of availability. Applicant issued a Second Notice of Deposition on July 14, 2010 for July 26, 2010. Opposer immediately informed Applicant's counsel that ACP would be attending Comic-Con, the world's largest international comic book and popular arts convention in San Diego, California and would thus be unavailable on July 26, 2010. Opposer is committed to providing alternate dates as soon as possible and has advised Applicant of this in written correspondence and during telephone discussions.

Opposer served its Notice of Deposition pursuant to Rule 30(b)(6) on July 20, 2010, setting July 26, 2010 as the date for said deposition. Opposer has offered to reschedule this date at a time mutually convenient for all parties during a period extended by the Trademark Trial and

Appeal Board or pursuant to a stipulation between the Parties. Despite this offer, Applicant objected to Opposer's Notice of Deposition, claiming that six days is unreasonable notice.

On July 20, 2010, the Parties held a meet and confer via telephone to discuss outstanding discovery issues. Counsel for Opposer proposed an extension of the discovery period to allow Opposer to respond to Applicant's second set of discovery requests, and enable the parties to address all alleged deficiencies and depose witnesses. Applicant's counsel refused to consent to an extension of discovery, except for the limited purpose of deposing Opposer's Rule 30(b)(6) witness. Opposer advised that it would move the Board unilaterally for an extension of the discovery period.

The parties engaged in a second meet and confer telephone conference on July 22, 2010. During the conference, Opposer again sought Applicant's consent to an extension of discovery. Applicant's counsel refused to grant consent. Opposer again advised that it would seek an extension of discovery without Applicant's consent. In addition, Opposer suggested that the Parties stipulate amongst themselves that each would be allowed to depose the other's witness outside the discovery period in the event the Board declined to enlarge the period. Applicant's counsel again refused, noting that Applicant would only agree to extend the time for purposes of taking party depositions if Opposer agreed not seek a further extension of the discovery period. Opposer declined this option because Opposer believes that additional time is needed to address various discovery issues, not just depositions and Applicant has further objected to Opposer's Notice of Deposition in any event. Because Applicant refuses to extend discovery without strict limitations and will not allow Opposer to depose Betty Rides' witness outside the discovery period, Applicant has advised that it will seek an Order of Protection against Opposer's Notice of Deposition.

Given Applicant's counsel's refusal to extend discovery, Opposer now moves unilaterally for an extension of the discovery period and all subsequent dates.

GOOD CAUSE EXISTS FOR EXTENDING DISCOVERY BY SIXTY DAYS

Opposer's Motion for Extension of Discovery and All Subsequent Dates is made in good faith and not for the purposes of undue delay.

Opposer seeks a sixty day extension of the discovery period to allow the parties to complete discovery and resolve all discovery issues. Both parties have recently alleged discovery deficiencies which must be addressed and which, Opposer believes, cannot be resolved prior to the close of discovery. The additional time would enable both Applicant and Opposer to resolve these discovery disputes and supplement discovery responses and production in an effort to cure any claimed deficiencies.

Both parties also have outstanding Rule 30(b)(6) Notices of Depositions. Opposer's witness is out of state attending to business obligations and is unavailable for deposition prior to the close of discovery. Applicant has objected to Opposer's Rule 30(b)(6) Notices of Deposition and intends to seek an Order of Protection (as a direct result of its own unwillingness to cooperate with Opposer in rescheduling the deposition and/or extending the discovery period).

In addition, on June 15, 2010, Opposer Petitioned to Cancel Applicant's U.S. Trademark Registration No. 3381169 for the BETTY RIDES mark. See Cancellation No. 92052562. Opposer intends to move to consolidate this Opposition with Cancellation No. 92052562 pursuant to Fed. R. Civ. P. 42(a) and TBMP § 511. Betty Rides' Answer in Cancellation No. 92052562 is due July 26, 2010 and Applicant has not yet filed its Answer. Indeed, Applicant has filed a Motion for a More Definite Statement in an attempt to prevent the consolidation of these

two proceedings. Thus, issue will not be joined until that motion is resolved, preventing Opposer from moving to consolidate Opposition No. 91191556 and Cancellation No. 92052562 until that time. See TBMP § 511. An extension will enable Opposer to file a Motion for Consolidation, which will save the Board and the Parties in time, effort, and expense, including avoidance of the taking of duplicative depositions.

PROPOSED SCHEDULE

Opposer proposes that discovery and all subsequent dates be extended pursuant to the proposed schedule below:

Discovery Closes	September 23, 2010
Plaintiff's Pretrial Disclosures	November 7, 2010
Plaintiff's 30-day Trial Period Ends	December 22, 2010
Defendant's Pretrial Disclosures	January 6, 2011
Defendant's 30-day Trial Period Ends	February 20, 2011
Plaintiff's Rebuttal Disclosures	March 7, 2011
Plaintiff's 15-day Rebuttal Period Ends	April 6, 2011

Noting that this is the first motion for an extension of the discovery period in this proceeding, Opposer believes that good cause exists for granting this motion, and respectfully requests a favorable consideration by the Board.

In addition, Opposer requests emergency consideration of this Motion and a telephone conference between the parties and the Trademark Trial and Appeal Board. Opposer's counsel

contacted Interlocutory Attorney George Pologeorgis and left two voicemail messages advising that this Motion was being filed, that Applicant was aware that Opposer would be seeking emergency relief and a telephone conference with the Board.

Respectfully submitted,

By: Oren Gelber

Matthew C. Wagner
Oren Gelber
COLLEN IP
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
(914) 941-5668
Counsel for Opposer Archie Comic Publications, Inc.

Dated: July 22, 2010

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 03-2465.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED ELECTRONICALLY WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE.

By: Lauren Kennedy Dated: July 22, 2010

CERTIFICATE OF SERVICE

I, Lauren Kennedy, hereby certify that on July 22, 2010, the enclosed Motion for Extension of Discovery and All Subsequent Dates was delivered via e-mail and U.S. First Class Mail upon Applicant's Attorney of Record at the following address:

Salumeh Loesch
Klarquist Sparkman, LLP
One World Trade Center
121 SW Salmon Street
Suite 1600
Portland, OR 97204
salumeh.loesch@klarquist.com

Lauren Kennedy