

ESTTA Tracking number: **ESTTA347536**

Filing date: **05/14/2010**

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

Proceeding	91191663
Party	Defendant SheRide Snowboard Camp LLC
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Date	05/14/2010
Attachments	Extend - OM.pdf ( 6 pages )(24219 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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K-2 CORPORATION	)	Opposition No.
	)	91191663
Opposer,	)	
	)	Application
v.	)	S.N. 77/614,398
	)	
SheRide Snowboard Camp, LLC	)	
	)	
Applicant.	)	
	)	

**APPLICANT’S MEMORANDUM IN OPPOSITION TO  
OPPOSER’S MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS**

Applicant, SheRide Snowboard Camp, LLC (“SheRide”), by undersigned counsel and pursuant to Rule 403.04, hereby responds in opposition to Opposer K2 Corporation’s Motion to Extend Discovery and Trial Periods. For the following reasons, the Opposer’s Motion should be denied:

Opposer K2’s Motion fails to establish good cause for an extension of discovery. To be entitled to an extension of the discovery period, Opposer K2 must demonstrate “good cause.” See Fed.R.Civ.P. 6(b); see also TBMP § 509.01 (“motion to extend must set forth with particularity the facts said to constitute good cause”). Opposer K2 shoulders the burden of persuading the Board that it was diligent in meeting its responsibilities and is entitled to additional time. See Sunkist Growers, Inc. v. Benjamin Ansehl Company, 229 U.S.P.Q. 147 (TTAB 1985). Indeed, the Board has noted that it will carefully scrutinize a motion to extend discovery to determine “whether good cause has been shown, including the diligence of the moving party during the discovery

period”. Luemme, Inc. v. D.B. Plus, Inc., 53 U.S.P.Q.2d 1758, 1760 (TTAB 1999) (denying motion to extend discovery where moving party did not serve written discovery requests until the final day of discovery and took no depositions during the discovery period); see also, Luehrmann v. Kwik Kopy Corp., 2 U.S.P.Q.2d 1303, 1305 (TTAB 1987) (mere delay in initiating discovery does not constitute good cause for extension of discovery period).

Initially, Applicant notes that Opposer does not contend that it was unaware of the deadline. On August 26, 2009, the TTAB issued its Scheduling Order, which set out deadlines for, among others, a Discovery Conference (11/4/2009), Initial Disclosures (12/4/2009), expert disclosures, and the close of Discovery (5/3/2010). The parties conducted a Discovery Conference on October 28, 2009 and filed Initial Disclosures on December 4, 2009. On April 13, 2010, Applicant SheRide served discovery on the Opposer K2 of the approaching close of discovery. Clearly aware of the deadline, on May 3, 2010, Opposer K2 filed its Motion to Extend Discovery and Trial Periods. Three days earlier, on April 30, 2010, Opposer served interrogatories and requests for production, and filed a Petition for Cancellation of Applicant’s SHERIDE mark.

Opposer K2’s justification for an extension is limited to a vague statement of delay. Opposer K2 has not made any showing of diligence or provided any details regarding the putative delay alleged in its Motion. The Motion to Extend explains that its counsel changed firms on January 1, 2010 and “has therefore not been able to complete discovery due to delays associated with the change of firms and all of the attendant tasks associated with the move of counsel”. There is not one statement regarding diligent pursuit during the discovery period. Moreover, the Motion is silent

regarding what the associated “delays” consist of or what “tasks” prevented the taking of discovery.

The chronology of this case demonstrates that Opposer K2 had more than sufficient time to take discovery and that the delay in doing so was due solely to its own procrastination. On Friday afternoon, April 30, 2010, counsel for Opposer K2 contacted undersigned counsel and conveyed that K2 would file a petition for cancellation against Applicant’s SHERIDE mark (Registration No. 3,600,135) unless Applicant settled this proceeding. At no time during this communication or before, did Opposer’s counsel state that her transition from one firm to another had frustrated the ability to conduct discovery. Instead, Opposer’s counsel stated that additional discovery was necessary to conduct “follow-up discovery”. It is telling that on April 30, 2010, Opposer had sufficient time to prepare and mail out written discovery and filed a cancellation proceeding against Applicant’s SHERIDE mark.<sup>1</sup> In essence, having waited until the last days of the discovery period, Opposer now seeks additional time to conduct follow-up. However, the Board has expressly rejected this rationale as justification for an extension. TBMP § 403.04 (party that waits until waning days of discovery period to serve written discovery not entitled to extension to conduct follow-up).

Opposer’s stated reason for an extension is doubtful. Negotiations to move from one firm to another generally transpire over months and afford ample notice in advance of a move.<sup>2</sup> Counsel for Opposer K2 does not explain in any way when negotiations

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<sup>1</sup> Although Applicant filed a Change of Correspondence Address and mailed a copy to Opposer’s counsel on March 9, 2010, the April 30, 2010, discovery and cancellation proceeding documents were mailed to the old address for Applicant’s counsel thereby delaying the receipt until May 12, 2010. It is not clear whether this is simply negligence or gamesmanship.

<sup>2</sup> Applicant SheRide notes that its counsel moved their entire firm on February 27-28, 2010 from one physical location to another. Despite the tasks associated with such a move, it was able to serve discovery in a timely manner.

were conducted or for how long in advance she was aware of the move to a new firm. Nor is there any explanation regarding how many staff members are employed at the new firm, why such staff could not assist in this matter,<sup>3</sup> or what efforts were made to transition her practice. There is likewise no explanation regarding what associated tasks were so consuming that discovery could not be conducted during the 123 days that followed her move to the new law firm.

The veiled explanation that Opposer K2 conveyed to undersigned counsel belies its representation in the Motion. Opposer K2 anticipated that the Applicant would eventually settle and made no effort to prosecute its case. When Applicant SheRide served discovery in an effort to present a defense, Opposer K2 threatened a cancellation proceeding unless it settled. Its failure to pursue discovery was occasioned by mere delay, unrelated to an office move.

It is difficult to imagine that Opposer K2, which is a party in more than 12 opposition and cancellation proceedings relating to its RIDE mark, was not able to conduct discovery during the four months that followed the transfer to a new firm. There is no reason why it could not have simply modified discovery in other matters relating to its RIDE mark and served them on Applicant. Indeed, Opposer K2 was able to prepare and serve (albeit to the wrong address) written discovery and a petition for cancellation in only one day.

Opposer K2 cannot argue that it reasonably expected a settlement in this proceeding. During the Discovery Conference, the parties discussed settlement and determined that there was NOT an opportunity to settle, and the case would need to go

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<sup>3</sup> The website for Davis, Wright & Tremain, of which Opposer's counsel is a partner, indicates that there are 210 attorneys in her office alone and 535 attorneys firmwide. Certainly there is more than enough attorneys and support staff to assist in the transition of Opposer's counsel's practice.

forward. Following the filing of Initial Disclosures, Opposer K2 did not engage in any further settlement discussions, other than on April 30, 2010, when Opposer K2 threatened a petition for cancelation unless Applicant settled.

Having merely delayed its discovery, Opposer K2 should not be rewarded with an extension of time. Opposer K2 has limitless resources available to it to conduct this proceeding and was at all times capable of conducting discovery. Opposer K2 is part of Jarden Corporation, a for-profit corporation that had net sales of over \$5 billion dollars in 2009. In contrast, Applicant SheRide is a snow board camp for women based in Durango, Colorado, which is specifically designed to build and solidify skills and confidence for women in relation to the sport of snowboarding. Although SheRide's revenues are very small, all proceeds from the camp are devoted to assisting at-risk-teens who participate in SOS Outreach Durango.<sup>4</sup>

WHEREFORE, for all of the foregoing reasons, Applicant SheRide respectfully requests that Opposer K2's Motion to Extend Discovery and Trial Periods be denied.

Respectfully submitted,

s/ Richard W. Driscoll

Date: May 14, 2010

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<sup>4</sup> Applicant SheRide is represented by Driscoll & Seltzer, PLLC, which is handling the matter on a *pro bono* basis due to the worthwhile cause that the Applicant supports.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of May 2010, a true copy of the foregoing APPLICANT'S MEMORANDUM IN OPPOSITION TO OPPOSER'S MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS was delivered by mailing a copy thereof via the U.S. Postal Service in a sealed envelope as first class mail with postage thereupon fully prepaid and addressed to attorney for Opposer, Cindy L. Caditz, Esq., Davis, Wright & Tremaine, LLP, Suite 2200, 1201 Third Avenue, Seattle, Washington 98101-3045.

s/ Richard W. Driscoll

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Richard W. Driscoll