

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

MBA

Mailed: June 2, 2011

Opposition No. 91195709

Comité Interprofessionnel du
Vin de Champagne and
Institut National et de
l'Origine et de la Qualité

v.

Shlomo David Jehonadav

Michael B. Adlin, Interlocutory Attorney:

This case is almost a year old and it appears that since the close of the pleadings, the parties have failed to meet any of the pretrial deadlines set in the Board's institution order of July 19, 2010 (the "Scheduling Order"). In any event, this case now comes up for consideration of applicant's motion, filed March 26, 2011, for a 90 day extension of discovery and trial dates. Opposers contest the motion.¹

By way of background, pursuant to the Scheduling Order, the discovery conference deadline was September 27, 2010,

¹ Opposers' response to applicant's motion is untimely, but the response is accompanied by a cross-motion to reopen opposers' time to respond, based on opposers' not receiving or becoming aware of applicant's motion until after opposers' time to respond to it had passed. Declaration of Peter M. Brody, opposers' counsel ("Brody Dec."), ¶ 2. Opposers' cross-motion is hereby **GRANTED**, as conceded, because applicant failed to respond thereto. Trademark Rule 2.127(a).

initial disclosures were due October 27, 2010 and discovery was scheduled to close on March 26, 2011, the same day applicant filed his motion. The parties failed to conduct the required discovery conference² or exchange initial disclosures, and did not request any extensions of time in which to do so.³ Nor has either party sought to reopen these deadlines.

Applicant's motion to extend discovery is sparse at best. It is not supported by a declaration or other evidence of any kind. The sole basis for the motion is applicant's vague claim that "[t]he parties have not yet exchanged discovery documents or information."

In response, opposers point out that not only have the parties not "exchanged discovery documents or information," but in fact applicant has not served any discovery requests. Brody Dec. ¶ 3. Opposers argue that applicant, having not served any discovery and having waited until the very last day of the discovery period to seek an extension thereof,

² Opposers made some effort to schedule the conference in advance of, and after, the deadline. Opposers did not, however, move for sanctions for applicant's failure to participate in the required conference, a remedy which was, but is no longer, available under Trademark Rule 2.120(g)(1).

³ The parties did not agree to waive initial disclosures, or at the very least did not inform the Board of any such agreement. See, Boston Red Sox Baseball Club LP v. Chaveriat, 87 USPQ2d 1767 (TTAB 2008) ("Parties must inform the Board, by stipulation or motion, any time they agree to modify their obligations under the rules governing disclosures and discovery ...").

has not been sufficiently diligent and has not established good cause for the requested extension.

Because applicant moved for an extension prior to the expiration of the discovery period (albeit on the very last day thereof), he need only establish "good cause" for the requested extension. Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509 (2d ed. rev. 2004). Generally, "the Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused." American Vitamin Products Inc. v. DowBrands Inc., 22 USPQ2d 1313, 1315 (TTAB 1992). However, applicant, as the moving party, "retains the burden of persuading the Board that [he] was diligent in meeting [his] responsibilities and should therefore be awarded additional time." National Football League v. DNH Management LLC, 85 USPQ2d 1852, 1854 (TTAB 2008).

Here, applicant's "sparse motion contains very little information upon which the Board could find good cause." Luemme Inc. v. D.B. Plus Inc., 53 USPQ2d 1758, 1760 (TTAB 1999). In addition, the record shows that applicant has effectively failed to participate in this matter, by missing deadlines repeatedly, and essentially ignoring opposers' efforts to schedule a discovery conference and discuss initial disclosures. Furthermore, "it is settled that mere

delay in initiating discovery does not constitute good cause for an extension of the discovery period." Id. at 1761. In fact, in Luehrmann v. Kwik Kopy Corp., 2 USPQ2d 1303 (TTAB 1987), a party's extension request was denied because it waited until the very last day of the discovery period to serve discovery requests. In this case, by contrast, applicant did not even do that, choosing instead to draft a motion on the last day of discovery rather than discovery requests. Therefore, while this is applicant's first request to extend and there is no evidence of bad faith (at least in requesting the extension), applicant's "claimed need for an extension of discovery is the product solely of [applicant's] unwarranted delay in initiating discovery." National Football League, 85 USPQ2d at 1855. Accordingly, applicant's motion is hereby **DENIED** and the discovery period is closed. Id.

Opposers request that testimony periods be reset such that opposers have time "in which to complete and file their motion for summary judgment." Opposers are apparently unaware of Trademark Rule 2.127(e)(1), under which "[a] party may not file a motion for summary judgment until the party has made its initial disclosures" As stated, opposers have not made initial disclosures, Brody Dec. ¶ 7, the deadline for doing so has passed and there is no pending

motion to reopen the deadline for serving initial disclosures.⁴

In conclusion, applicant's motion for extension is denied. Trial dates are reset as follows:

Discovery Closes	CLOSED
Plaintiff's Pretrial Disclosures	July 18, 2011
Plaintiff's 30-day Trial Period Ends	September 1, 2011
Defendant's Pretrial Disclosures	September 16, 2011
Defendant's 30-day Trial Period Ends	October 31, 2011
Plaintiff's Rebuttal Disclosures	November 15, 2011
Plaintiff's 15-day Rebuttal Period Ends	December 15, 2011

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.

⁴ The parties are free to stipulate to reopening the deadline for initial disclosures and very briefly reopening discovery. Trademark Rule 2.127(a).