

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

Baxley

Mailed: April 5, 2013

Opposition No. 91203399

iCourier Software Systems Ltd.

v.

E-filliate, Inc.

Andrew P. Baxley, Interlocutory Attorney:

On March 29, 2013, the Board granted opposer's motion to extend time to serve discovery responses, allowing opposer until April 5, 2013 to serve such responses. On April 4 and 5, 2013, opposer filed two copies of a motion for summary judgment on its pleaded claim under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d).

A cursory review of opposer's motion indicates that, other than one reference to the previous standard for summary judgment in the preamble of its motion, opposer essentially argues the merits of its case as one would at final hearing, instead of arguing the appropriate standard for entry of summary judgment, i.e., that there is no genuine dispute as to any material fact remaining for trial, and that it is entitled to entry of judgment as a matter of law. See Fed. R. Civ. P. 56; TBMP Section 528 (3d ed. rev.

2012). In addition, opposer presents scant evidence in support of its motion.¹

In the Board's March 5, 2013 order, the Board stated that "[o]pposer's delay in serving discovery responses tries the Board's patience. ... [A]s the party with the burden of proof herein, opposer should have expected to receive discovery requests." March 5, 2013 order at 3, n.2. The Board further stated in the March 29, 2013 order that it "shares applicant's annoyance at opposer's continued failure to serve responses to discovery requests more than three months after the service of those discovery requests. Opposer brought this proceeding and, in doing so, took responsibility for moving it forward in a timely manner." March 29, 2013 order at 2.

Under the circumstances in this case, opposer's motion appears to be nothing more than a subterfuge to avoid serving responses to applicant's discovery requests, which were served more than three months ago. Accordingly, the motion for summary judgment will receive no consideration.²

The Board, in exercising its authority to control the conduct of cases on its docket, will not consider any

¹ To the extent that opposer relies upon Trademark Act Section 43(a), 15 U.S.C. Section 1125(a), in its motion, the Board noted in the March 30, 2012 memorandum of the parties' discovery conference that "Section 43(a) is based on use, rather than registration, of a mark, and [that Section 43(a)] provides only for relief in a civil action."

² The vast majority of summary judgment motions are denied.

further motions for summary judgment from opposer until opposer serves responses to applicant's discovery requests and files proof of such service with the Board. See TBMP Section 510.01.

In view of opposer's filing of the motion for summary judgment during an extension to serve discovery responses that was granted in the March 29, 2013 order based on a showing of extraordinary circumstances, the Board finds that opposer has abused the privilege of extensions herein. See *National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008). Accordingly, opposer will not receive any further extensions of time to respond to applicant's discovery requests.³

The filing of the motion for summary judgment on April 4, 2013 effectively tolled the running of dates herein. See *Leeds Technologies Ltd. v. Topaz Communications Ltd.*, 65 USPQ2d 1303 (TTAB 2002); TBMP Section 510.03(a) (3d ed. rev. 2012). Proceedings herein are resumed. Opposer is allowed until **Monday, April 8, 2013** to serve responses responses to applicant's discovery requests. Remaining dates are reset as follows.

Plaintiff's Pretrial Disclosures Due	4/8/2013
Plaintiff's 30-day Trial Period Ends	5/23/2013

³ In view of applicant's objections to previous motions to extend, the Board presumes that applicant will not consent to any further extensions of time to respond to applicant's discovery requests.

Defendant's Pretrial Disclosures Due	6/7/2013
Defendant's 30-day Trial Period Ends	7/22/2013
Plaintiff's Rebuttal Disclosures Due	8/6/2013
Plaintiff's 15-day Rebuttal Period Ends	9/5/2013

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.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.