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

Proceeding	91220486
Party	Plaintiff Nu World Title, LLC
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Date	11/17/2015
Attachments	OPP - Mtn for Extension - AS FILED.pdf(458128 bytes)

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

Nu World Title, LLC,
Petitioner/Opposer,

v.

World Title Company,
Registrant/Applicant.

Cancellation No.: 92059989
Registration No.: 2,893,292
Mark: **WORLD TITLE
COMPANY and Design**
Registration Date: October 12, 2004

Opposition No.: 91220486
Application Serial No.: 86/343,394
Mark: **WORLD TITLE
COMPANY (word mark)**
Publication Date: December 17, 2014

**PETITIONER/OPPOSER’S OPPOSITION TO REGISTRANT/APPLICANT’S
MOTION FOR EXTENSION OF TIME TO RESPOND TO NU WORLD TITLE,
LLC’S FIRST SET OF INTERROGATORIES, REQUEST FOR PRODUCTION,
AND REQUEST FOR ADMISSIONS**

Petitioner/Opposer Nu World Title, LLC (“NWT”) hereby files its memorandum of law in opposition to Registrant/Applicant World Title Company’s (“WTC”) Motion for Extension of Time to Respond to NWT’s First Set of Interrogatories, Request for Production, and Request for Admissions (Doc. No. 10, the “Extension Motion”)¹. As no good cause exists for WTC to receive additional time to comply with the Board’s October 17, 2015 Order (the “Board Order”) granting NWT’s Motion to Compel, NWT respectfully submits that the Board should **DENY** the Extension Motion, find that WTC has failed to comply with the Board Order, and sanction WTC accordingly, including the entry of default judgment in for NWT.

¹ Although WTC styled its filing as a Motion for Extension of Time to Respond to NWT’s discovery requests, the Extension Motion is, in actuality, a Motion for Extension of Time to Comply with the Board’s Order (Doc. No. 9) granting NWT’s Motion to Compel (Doc. No. 8).

A. Procedural Background

NWT brought these consolidated proceedings against WTC on the basis that WORLD TITLE COMPANY is generic, or alternatively, merely descriptive. In response, WTC asserted that its purported trademarks are distinctive and have acquired distinctiveness and secondary meaning. NWT timely served WTC with a number of basic discovery requests on May 29, 2015. Specifically, NWT sought information and documents regarding, *inter alia*, such fundamental issues as WTC's use of the phrase, along with the various elements necessary to establish WTC's defenses.

On June 29, 2015, WTC requested a 30-day extension of time to respond to NWT's discovery requests. In response, counsel for NWT agreed to the proposed extension "so long as we receive both your responses and all responsive documents at the end of the 30 days..." WTC's counsel expressly agreed to provide "**all responses and responsive documents to Discovery within 30 days.**" (Doc. No. 8)².

On July 31, 2015, WTC served on NWT its Responses and Objections to NWT's First Request for Interrogatories, First Request for Admissions and First Request for Production of Documents. WTC included the following language throughout its discovery responses:

These items may be made available for viewing, inspection, and copying, upon written request and at a mutually agreeable date and time, at 2761 Executive Park Drive, Weston, Florida 33331.

² All of the discovery-related requests, responses, and communications were submitted to the Board in conjunction with NWT's Motion to Compel Discovery Responses and to Test the Sufficiency of the Admissions. (Doc. No. 8).

Such language directly contradicts its prior agreement to provide "**all responses and responsive documents to Discovery within 30 days.**" Moreover, WTC improperly objected and withheld responsive documents on the basis of "privileged trade secret," notwithstanding the existence of the Board's standard Protective Order.

After WTC ignored two good-faith efforts to resolve its inadequate discovery responses, NWT filed its Motion to Compel on August 24, 2015. WTC failed to respond to NWT's Motion to Compel, and, on October 17, 2015, the Board entered the following Order:

Accordingly, WTC is ORDERED to serve on NWT's counsel, **no later than November 15, 2015**: (1) its responses to NWT's first set of interrogatories; (2) documents responsive to NWT's first set of requests for production of documents and things; (3) an appropriate privilege log; and (4) amended responses to NWT's requests for admission. WTC must respond in full and without objection on the merits. See *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000). In the event that WTC fails to serve full responses as ordered herein, NWT's remedy may lie in a motion for sanctions, as appropriate. See Trademark Rule 2.120(g)(1); TBMP § 411.05.

(Doc. No. 9)(emphasis added). On November 16, 2015, 30 days after entry of the Board Order and the first business day following the expiration of the time period for compliance with the Board Order, WTC filed its Extension Motion – nearly *six months* after NWT served its discovery requests – seeking an additional 30 days to respond to the outstanding requests in compliance with the Board Order³.

³ WTC's statement in the Extension Motion that it "intended to oppose [the] Motion to Compel and to seek a hearing on the matter before the [Board]" does not excuse WTC's failure to act. The Board's rules make clear the timing requirements of an opposition to a motion, along with the procedure for seeking a telephone hearing with an Interlocutory

B. Argument and Citation of Authorities

In the Extension Motion, WTC asserts that “the file attorney assigned to the instant matter sustained a serious injury that required immediate surgery and an extended medical leave,”⁴ and he “recently returned from the aforementioned medical leave and immediately contacted Counsel [on November 13, 2015]⁵ for NWT to seek an extension to respond the outstanding discovery.” Extension Motion, pp. 1-2. The unidentified “file attorney” is not Jonathan Kline, WTC’s attorney of record, and Mr. Kline provides no explanation as to why he, as the attorney of record in these consolidated proceedings, was incapable of complying with the Board’s Order.

While NWT is obviously sympathetic to WTC’s “file attorney’s” apparent foot injury, it was incumbent upon Mr. Kline to make sure that he knew what deadlines were

Attorney. WTC’s counsel’s failure to act does not constitute good cause for an extension of time to comply with the Board Order. *See* TBMP §§ 413.01 and 502.06.

⁴ Notably, WTC provides absolutely no details about the date of the injury, the surgery, or the duration of the “extended medical leave.” The failure to provide this specific information demonstrates a lack of good cause. *See Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758, 1761 (TTAB 1999)(The Board is also troubled by petitioner’s repeated, vague assertion that extensive travel has made it difficult for petitioner to participate with its counsel in the discovery process. As noted above, petitioner has failed to provide detailed information concerning the nature and dates of petitioner’s travel; what efforts counsel made to contact petitioner during the critical discovery period; and what difficulties, if any, counsel experienced trying to contact petitioner.”).

⁵ Garrett McIntyre, associate attorney at Jonathan Kline, P.A., who is apparently the “file attorney” referenced in the Extension Motion, contacted undersigned counsel on November 13, 2015, after months of non-communication, requesting the extension set forth in the Extension Motion, based on an apparent injury to his foot/ankle suffered while playing tennis. True and correct copies of the email exchange between undersigned counsel and Mr. McIntyre are attached hereto as Exhibit A. Mr. McIntyre is not attorney of record, has never filed a single pleading in these consolidated proceedings, and is not an officer or director of WTC.

looming and take appropriate actions to ensure that he did not miss those deadlines. *See Meza v. Washington State Dep't of Social & Health Services*, 683 F.2d 314, 315 (9th Cir. 1982)(refusing to find excusable neglect where other attorneys in the Assistant Attorney General's office could have filed the appeal); *Gooch v. Skelly Oil Co.*, 493 F.2d 366, 370 (10th Cir. 1974)(receipt of notice of entry of judgment by one of two counsel of record precludes finding of excusable neglect); *Buckley v. United States*, 382 F.2d 611, 614 (10th Cir. 1967)(no excusable neglect where appellant was represented at trial by four attorneys and two law firms); *Flett v. W.A. Alexander & Co.*, 302 F.2d 321, 323 (7th Cir. 1962)(no excusable neglect where appellant was represented at trial by two attorneys and only one was physically incapacitated). Simply put, the inclusion of the “file attorney’s” surgery as a purported basis for the Board to find excusable neglect is nonsensical.

Mr. Kline, the original registrant of the trademark at issue in these consolidated proceedings, offers no reasonable explanation as to why he was incapable of complying with the Board Order in a timely manner. Mr. Kline, as the principal of WTC, is in the best position to comply with the Board Order by: (a) providing substantive responses to interrogatories that were propounded in May 2015, and (b) producing documents that, per WTC’s July 31, 2015 responses, were “available for viewing, inspection, and copying” over four months ago. The express language of the Board Order makes clear that WTC is not permitted to set forth any “objection[s] on the merits” to NWT’s discovery requests, so Mr. Kline’s filing of an Extension Motion claiming that the unavailability of his “file attorney” necessitates an additional month for WTC to comply with the Board Order is,

plainly and simply, frivolous. Mr. Kline is using his file attorney's unavailability due to a foot injury as an excuse for non-compliance with the Board Order and the Board should not condone such conduct.

WTC offers no valid support for the Extension Motion. Mr. Kline's statements about his "[file attorney's] recent medical leave and the difficulty of the continuing recovery" do not justify an extension, particularly in view of the fact that WTC was specifically ordered to supplement its prior discovery responses and produce documents by "no later than November 15, 2015." WTC's failure to show sufficient good cause for the requested extension is basis alone to deny WTC's Extension Motion. *See* TBMP §509.01(a)("[A] party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor."); *see also National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008)(motion denied because opposer failed to make the minimum showing necessary to establish good cause to extend discovery); *SFW Licensing Corp. v. Di Pardo Packing Ltd.*, 60 USPQ2d 1372, 1373 (TTAB 2001) (opposers had not come forward with "detailed facts" required to carry their burden explaining their inaction); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Manufacturing Co.*, 55 USPQ2d 1848, 1851 (TTAB 2000)(motion to extend discovery denied when counsel delayed until penultimate day of response period to file unconsented motion to extend time).

The party moving for an extension bears the burden of proof, and must "state with particularity the grounds therefor, including detailed facts constituting good cause." *Luemme*, 53 USPQ2d at 1760 ("[I]t is settled that mere delay in initiating discovery does not constitute good cause for an extension of the discovery period."). The Board will "scrutinize carefully" any motion to extend time, to determine whether the requisite good cause has been shown. *See* TBMP §509.01(a). Here, WTC has fallen far short of its burden in this case. WTC and its counsel have repeatedly abused the privilege of extensions. *See* Motion to Compel, pp. 3-5. WTC continues its discovery gamesmanship by refusing to produce *any* responsive documents and still has yet to fully answer *any* of NWT's Interrogatories and virtually all of NWT's Admission Requests. Such conduct warrants the denial of its extension request. *Chesebrough-Pond's Inc. v. Faberge, Inc.*, 618 F.2d 776, 205 USPQ 888, 891 (CCPA 1980) (an attorney has no right to assume that extensions of time will always be granted, and there appears no reason why a brief was not timely filed).

As a result of WTC's refusal to comply with the Board Order, NWT's efforts to obtain timely and substantive discovery responses continue to be stymied. For example, WTC's conduct inappropriately forces NWT to waste resources by engaging in what should be unnecessary motion practice. WTC's delay, and now the additional time necessary to resolve the Extension Motion, prejudices NWT's ability to resolve the issues presented in these consolidated proceedings, as well as the efficient administration of justice. Adhering to litigation deadlines "permits the litigation to move forward, promotes

respect for the judicial process, and allows the parties to plot their litigation strategy efficiently. If the parties cannot rely on the schedule, then they waste resources preparing for an unknown or uncertain future." *In re WorldCom, Inc. Sec. Litig.*, 237 F.R.D. 541, 544 (S.D.N.Y. 2006); *see also Easley v. Kirmsee*, 382 F.3d 693, 698 (7th Cir. 2004) (noting that "attorney inattentiveness to litigation is not excusable, no matter what the resulting consequences the attorney's somnolent behavior may have on a litigant"); *Edward H. Bohlin Co., Inc. v. Banning Co., Inc.*, 6 F.3d 350, 357 (5th Cir. 1993) (finding that "[a] party has a duty of diligence to inquire about the status of a case"). The Board should not tolerate WTC's failure to comply the Board Order and, as a result the Board should **DENY** the Extension Motion.

C. Conclusion

Based on the foregoing, NWT respectfully requests that the Extension Motion be **DENIED** and WTC's deadline to comply with the Board Order should remain as previously set (i.e., by no later November 15, 2015). *See* TBMP §509.01(a) ("If a motion to extend the time for taking action is denied, the time for taking such action may remain as previously set."). Given WTC's failure to comply by the Board-ordered deadline, NWT submits that it is properly entitled to the sanction of the entry of Default Judgment in these consolidated proceedings.

Date: November 17, 2015

Respectfully submitted,

FRIEDLAND VINING, P.A.

s/David K. Friedland/

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing **PETITIONER/OPPOSER'S OPPOSITION TO REGISTRANT/APPLICANT'S MOTION FOR EXTENSION OF TIME TO RESPOND TO NU WORLD TITLE, LLC'S FIRST SET OF INTERROGATORIES, REQUEST FOR PRODUCTION, AND REQUEST FOR ADMISSIONS** was served upon Registrant/Applicant by delivering true and correct copies of same to Registrant/Applicant's counsel electronically on November 17, 2015 as follows:

Jonathan Kline, Esq.
Jonathan Kline, P.A.
2761 Executive Park Dr.
Weston, FL 33331

s/David K. Friedland/

David K. Friedland

EXHIBIT A

From: Garrett McIntyre Garrett.Mcintyre@jklawfl.com
Subject: RE: Nu World Title v. World Title Company
Date: November 12, 2015 at 3:36 PM
To: David Friedland dkf@friedlandvining.com
Cc: Jaime Vining jrv@friedlandvining.com, jonathan.kline@jklawfl.com, Receptionist Receptionist@jklawfl.com

Good Afternoon, David:

It's always a pleasure working with other members of your office. Unfortunately, pursuant to your unwillingness to accommodate my client's request for an informal extension of time, please be advised my client will likely be seeking a "formal" extension of time from the Trademark Trial and Appeal Board. Should you wish to extend the professional courtesy of a brief extension to a fellow attorney who is recovering from surgery and actively working to obtain responses to your client's discovery requests, please don't hesitate to contact our office and extend the same. Additionally, please provide all future correspondence via email or other written means.

Should you have any questions or should you wish to discuss this case, please don't hesitate to contact me.

Best Regards,
Garrett W. McIntyre, Esq.
Associate Attorney



Jonathan Kline, P.A. Attorneys at Law


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From: David Friedland [mailto:dkf@friedlandvining.com]
Sent: Thursday, November 12, 2015 3:27 PM
To: Garrett McIntyre <Garrett.Mcintyre@jklawfl.com>
Cc: Jaime Vining <jrv@friedlandvining.com>; jonathan.kline@jklawfl.com
Subject: Re: Nu World Title v. World Title Company

Dear Garrett,

It appears that our call was disconnected. To be clear, we will not agree to an extension of time for your client to comply with the Board's October 17, 2015 order. If we do not receive supplemental discovery responses "in full and without objection on the merits," and all responsive documents by Monday, November 16, we will seek default.

Regards,

David K. Friedland, Esq

Florida Bar Board-Certified
Intellectual Property Attorney



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On Jul 31, 2015, at 8:45 PM, David K. Friedland <dkf@friedlandvining.com> wrote:

Garrett -

Per the below email exchange, your office agreed to provide "all responses and **responsive documents** to Discovery within 30 days" when we agreed to the extension request.

As such, your inclusion of the following language in your discovery responses directly contradicts our agreement:

1. These items may be made available for viewing, inspection, and copying, upon written request and at a mutually agreeable date and time, at 2761 Executive Park Drive, Weston, Florida 33331. Please confirm that all responsive documents are among the papers being mailed to our office. If not, please deliver all responsive documents and a privilege log to our office, both digital and paper sets, by Wednesday, August 5 or we will have no choice but to seek relief from the Board.

Sent from my iPhone

On Jul 30, 2015, at 5:17 PM, Brian Condore <brian_condore@jklawfl.com> wrote:

On Jun 29, 2015, at 5:17 PM, Brian Cordova <brian.cordova@jklawfl.com> wrote:

Thank you for your response. We will provide all responses and responsive documents to Discovery within 30 days.

From: David K. Friedland [<mailto:dkf@friedlandvining.com>]
Sent: Monday, June 29, 2015 5:16 PM
To: Brian Cordova
Cc: jrv@friedlandvining.com; Garrett McIntyre
Subject: Re: Nu World Title v. World Title Company

Brian -

So long as we receive both your responses and all responsive documents at the end of the 30 days, we are amenable to the requested extension. Please confirm.

Sent from my iPhone

On Jun 29, 2015, at 1:27 PM, Brian Cordova <brian.cordova@jklawfl.com> wrote:

Good afternoon Mr. Friedland,

Please advise if you would be willing to agree to allow World Title Company an additional 30 days extension of time to respond to discovery requests in the two cases referenced above. Please contact me at your earliest convenience if you have any questions.

Thank you.

Brian A. Cordova, Esq.

Associate Attorney

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