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

Proceeding	91227407
Party	Plaintiff Baccarat S.A.
Correspondence Address	MARK S LEONARDO BROWN RUDNICK LLP ONE FINANCIAL CENTER BOSTON, MA 02111 UNITED STATES Email: ip@brownrudnick.com, mleonardo@brownrudnick.com, cftergiotis@brownrudnick.com, jlu@brownrudnick.com
Submission	Reply in Support of Motion
Filer's Name	Mark S. Leonardo
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Signature	/s/ Mark S. Leonardo
Date	04/16/2018
Attachments	Baccarat - Reply Brief iso Mtn to Extend.pdf(119997 bytes)

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

In the matter of:
Serial No. 86/639975
For: BACCARAT
Published in the Official Gazette on October 20, 2015

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BACCARAT S.A.,	:	
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OPPOSER	:	
	:	
v.	:	Opposition No. 91227407
	:	
Laux, Stefan H.,	:	
	:	
APPLICANT.	:	
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Commissioner for Trademarks
Trademark Trial and Appeal Board
PO Box 1451
Alexandria, VA 22313-1451

**OPPOSER’S REPLY BRIEF IN SUPPORT
OF ITS MOTION TO EXTEND TRIAL DATES**

Opposer Baccarat S.A. (“Opposer”), by and through its undersigned counsel, hereby submits this limited reply to briefly address issues raised in Applicant’s Opposition (Dkt. No. 19) (the “Opposition”). For the reasons set forth herein, and in Opposer’s Motion (Dkt. No. 18) (the “Motion”), Opposer has more than satisfied the necessary showing of good cause for an extension, and its Motion should therefore be granted.

Contrary to Applicant's unsupported contentions, as well as its repeated mischaracterizations¹ and misstatements of fact,² Opposer has exceeded the necessary showing of good cause for its requested extension. As this Board's past liberal granting of extensions supports, Opposer's timely, good faith request for an extension, substantially in advance of its deadlines—both to permit sufficient time to negotiate pre-trial stipulations in advance of its pre-trial disclosures and to avoid an upcoming trial calendar conflict for counsel—more than satisfies the good cause standard. *See, e.g., Miss Universe L.P. v. Grandia*, No. 91220573, 2018 WL 1557270 (T.T.A.B. Mar. 28, 2018) (granting motion to extend trial period where motion was timely filed prior to expiration of time and nothing in record suggested movant “lacked diligence or unreasonably delayed in seeking an extension”); *Defiance Machine v. Rebel Arms Corp.*, No. 92066580, 2018 WL 638509, at *1 (T.T.A.B. Jan. 29, 2018) (granting motion to extend time to respond to discovery requests where no bad faith or negligence was found on part of movant).

¹ Though irrelevant to Opposer's request, Applicant apparently alleges that it has been “deprived of discovery” because it “could not afford further expensive motion practice.” *Opp.*, at 2. As an initial matter, Opposer notes that Applicant has nonetheless seen fit to oppose this routine extension request, which would avoid a trial calendar conflict for counsel and allow time to negotiate pre-trial stipulations to simplify issues to be tried, and also equally extend Applicant's own pretrial and trial dates. Opposer further notes that following granting of Applicant's request for an extension of the December 17, 2017 close of discovery to March 17, 2017, Applicant made no attempt whatsoever to allege or identify any purported deficiency in Opposer's production and, in fact, did not communicate with Opposer once during the entirety of that extended discovery period. Moreover, only after four attempts to contact Applicant's counsel regarding this request did Applicant—in its first communication in nearly four months, and nearly a month after the close of discovery—allege any purported deficiency in Opposer's production. *See Opp.*, at Exhibit 5 (April 11, 2018, 11:37 AM E-mail from C. Liedtke to J. Lu).

² For instance, Applicant's claim that it “at no point insisted or even suggested that a re-opening of the discovery period would be conditional for its consent to Opposer's request for an extension of the trial dates[,]” *Opp.*, at 3, is demonstrably false and belied by the fact of its non-consent. Applicant's April 11, 2018 e-mail at 11:37 AM in response to Opposer's request of April 3 speaks for itself, stating, “Applicant is agreeable to an extension as follows: All procedural deadlines that have not yet passed to be extended by 120 days, the discovery period to be re-opened and also extended by 120 days.” *Opp.*, at Exhibit 5.

Applicant apparently argues that Opposer does not establish good cause because it did not seek to negotiate pre-trial stipulations with Applicant *during the pendency of discovery*, which closed on March 17, 2018, without articulating why or how Opposer could have been expected to negotiate pre-trial stipulations with Applicant while discovery was still ongoing and incomplete. *See Opp.*, at 6. As set forth in the Motion, Opposer’s counsel timely contacted Applicant—just over two weeks after the close of discovery and a month before its pretrial disclosure deadline—on April 3, 2018 to seek consent to extend remaining trial dates to grant the parties additional sufficient time to discuss and reach agreement on pre-trial stipulations that may simplify issues to be tried in advance of its pre-trial disclosure deadline, and promptly filed its Motion the same day Applicant indicated it would not consent.

Opposer’s counsel further informed Applicant’s counsel that the requested extension of all remaining dates would avoid a trial calendar conflict that had arisen for counsel in a federal district court case set for a jury trial in June. *See Declaration of Jessica T. Lu (hereinafter “Lu Declaration”)*, attached hereto as Exhibit 1, at ¶ 3. To the extent Applicant complains of any failure of specificity regarding counsel’s trial calendar conflict, for the avoidance of any doubt, Opposer submits herewith the Lu Declaration, which further details that the sole associate assisting counsel of record for the Opposer will be traveling to Tampa, Florida in June to prepare for and take part in a 7-day federal jury trial, currently set to begin on June 18, 2018, for which travel and pre-trial preparation and obligations will substantially overlap and interfere with Opposer’s 30-day trial period. *Id.* at ¶ 2. As the Board has recognized, “the press of other litigation matters may indeed constitute good cause for granting an extension of time[.]” *Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL*, 59 U.S.P.Q.2d 1383 (T.T.A.B. 2001) (granting Opposer’s requested extension of

testimony period on basis of the press of counsel’s other litigation matters, despite motion being made at the end of Opposer’s testimony period). Accordingly, Opposer has sufficiently established good cause for its requested relief, which should be granted.³

The authority Applicant cites does not support its contentions otherwise. In *Procyon Pharm. Inc.*, 61 U.S.P.Q.2d 1542 (T.T.A.B. Nov. 26, 2001), for example, which Applicant cites, not only did the movant file its motion to extend its testimony period “on the final day of its testimony period,” but had failed to provide any detail supporting its request for an extension. *Id.* (emphasis added).⁴ In contrast, in this proceeding, Opposer has detailed the reasons supporting its request for an extension—including to avoid a trial calendar conflict in another litigation matter—and has done so promptly and in good faith following the close of discovery and substantially in advance of any approaching trial dates. In *Instruments SA Inc. v. ASI Instruments Inc.*, 53 U.S.P.Q.2d 1925 (T.T.A.B. Mar. 8, 1999), which Applicant also cites, the Board denied a motion to extend where the movant’s asserted good cause for an extension was based on alleged settlement discussions with the nonmovant, which the nonmovant “denied unequivocally.” *Id.* Here, Opposer’s showing of good cause on the basis of (1) an anticipated

³ Applicant also contends that Opposer has previously sought to extend the discovery deadline, but fails to specify the distinguishable context of that request, which was part and parcel of a motion to compel Applicant to comply with its longstanding discovery obligations. Opp., at 7. Though Opposer acknowledges that as part of its motion to compel Opposer had, together with its request for an order compelling discovery, requested a brief extension of the discovery period, this request was not to accommodate any delay or conflict on the part of Opposer, but was in fact requested exclusively to grant Opposer adequate time to compensate for “Applicant’s unwarranted delay and refusal to cooperate in discovery[,]” which had prejudiced Opposer’s ability to timely take discovery. See Dkt. No. 11. In any event, the record reflects that Opposer has not “abused” the “privilege of extensions” in this proceeding, which further supports granting the requested extension. See *Nat’l Football League v. DNH Mgmt., LLC*, 85 U.S.P.Q.2d 1852 (T.T.A.B. 2008).

⁴ Moreover, it should also be noted that the movant in that proceeding also failed to file a reply brief to address any of the issues raised in the non-movant’s opposition. *Id.*

need for additional time to negotiate pre-trial stipulations and (2) a trial calendar conflict is supported by the record, including the Lu Declaration, is not and cannot be denied by Applicant. Applicant's other cited authority is likewise inapposite, particularly where Opposer's Motion was diligently and timely filed. *See Nat'l Football League v. DNH Mgmt., LLC*, 85 U.S.P.Q.2d 1852 (T.T.A.B. 2008) (denying motion to extend discovery period on basis that movant was not "diligent in meeting its responsibilities" where it did not serve discovery requests until the final day of discovery); *Luemme, Inc. v. D.B. Plus Inc.*, 53 U.S.P.Q.2d 1758 (T.T.A.B. 1999) (denying motion to extend discovery filed on the last day of the discovery period); *Baron Philippe De Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 U.S.P.Q.2d 1848 (T.T.A.B. 2000) (denying motion to extend filed on the last day of the period sought to be extended). As such, where nothing in the record suggests a lack of diligence or unreasonable delay in seeking this extension, it is clear that Opposer has demonstrated good cause for the requested extension, which should be granted.

Accordingly, for the foregoing reasons, and those set forth in the Motion, Opposer respectfully requests that the Board grant its Motion and extend the remaining pretrial and trial dates by ninety (90) days.

Date: April 16, 2018
Boston, MA

Respectfully submitted,

/s/ Mark S. Leonardo

Mark S. Leonardo

Brown Rudnick LLP
One Financial Center
Boston, MA 02111
Tel.: (617) 856-8145
Attorney for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served this 16th day of April, 2018 by sending a copy thereof via first class mail and e-mail to counsel for the Applicant at:

Christian W. Liedtke
Acuminis PC
3420 Bristol St 6th Floor
Costa Mesa, CA 92626
cw.liedtke@acuminis.biz

/s/ Mark S. Leonardo
Mark S. Leonardo

EXHIBIT 1

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

In the matter of:
Serial No. 86/639975
For: BACCARAT
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	:	
APPLICANT.	:	
-----X	:	

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PO Box 1451
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DECLARATION OF JESSICA T. LU

I, Jessica T. Lu, being duly sworn, hereby depose and state as follows:

1. I am an associate with the law firm Brown Rudnick LLP based in the Boston, MA office and, together with counsel of record Mark S. Leonardo, serve as counsel for the Opposer Baccarat S.A. (“Opposer”) in the above-captioned proceeding. I respectfully submit this declaration in support of Opposer’s *Reply Brief in Support of Its Motion to Extend Trial Dates* (the “Motion”). I make this declaration based on my personal knowledge.

2. I am the sole associate representing Opposer in the above-captioned proceeding. I am also counsel of record in a civil action pending in federal district court in Florida, in which a

7-day jury trial is presently set to commence on June 18, 2018. In connection with that trial, I will be traveling to Tampa, Florida in June, and my pre-trial travel, preparation, and court obligations in that matter will substantially overlap and interfere with Opposer's 30-day trial testimony period, which is currently set to begin on May 16, 2018 and end on June 15, 2018. A 90-day extension of all remaining pretrial and trial dates in this proceeding, as requested in Opposer's Motion, will avoid any conflict or overlap with my other trial calendar and pretrial obligations in June.

3. For purposes of completion, attached hereto as Exhibit A is a true and correct copy of three e-mails I sent to counsel for the Applicant, Christian Liedtke, on April 3, April 6, and April 10, 2018, the last of which was omitted from Applicant's Opposition. See Dkt. No. 19, at Exhibit 5.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 16, 2018.

/s/ Jessica T. Lu
Jessica T. Lu

EXHIBIT A

Lu, Jessica T.

From: Lu, Jessica T.
Sent: Tuesday, April 10, 2018 5:12 PM
To: Christian W. Liedtke (cw.liedtke@acuminis.biz)
Cc: Leonardo, Mark S.
Subject: RE: Baccarat TTAB Opposition No. 91227407

Christian,

Following up again on our request for Applicant's consent to an extension of the trial deadlines as set forth below. Please let us know if Applicant will consent to a motion to extend. In addition to allowing time for the parties to confer on pretrial issues including stipulations, as noted below, this extension will also avoid a trial conflict for us in another matter.

Given that we have now reached out four times, including by phone on April 6, 2018, in an attempt to seek Applicant's consent, we intend to file a unconsented motion for extension of the trial deadlines if we do not hear back from you today. I look forward to your response.

Many thanks,
Jessica

Jessica T. Lu
Brown Rudnick LLP
T: 617.856.8583
F: 617.289.0760

From: Lu, Jessica T.
Sent: Friday, April 06, 2018 8:26 PM
To: Christian W. Liedtke (cw.liedtke@acuminis.biz)
Cc: Leonardo, Mark S.
Subject: RE: Baccarat TTAB Opposition No. 91227407

Hi Christian,

Following up on the below. Please let us know if the Applicant will consent to the proposed extension of remaining deadlines set forth below, or whether we should request relief without the Applicant's consent.

Best,
Jessica

Jessica T. Lu
Brown Rudnick LLP
T: 617.856.8583
F: 617.289.0760

From: Lu, Jessica T.
Sent: Tuesday, April 03, 2018 9:30 PM
To: Christian W. Liedtke (cw.liedtke@acuminis.biz)
Cc: Leonardo, Mark S.
Subject: Baccarat TTAB Opposition No. 91227407

Christian,

I hope this e-mail finds you well. We are writing to see if the Applicant has any objection to the parties jointly seeking a **90-day extension of all remaining deadlines**. We believe that such an extension would permit the parties sufficient time to prepare trial submissions, as well as confer regarding stipulations on the introduction of trial testimony and evidence and any stipulations of fact that may simplify the issues to be tried prior to the commencement of the trial period in May.

If the Applicant is amenable to such an extension, we would propose filing a stipulation to extend the existing deadlines as follows:

Plaintiff's Pretrial Disclosures 5/1/2018 -> **July 30, 2018**
Plaintiff's 30-day Trial Period Ends 6/15/2018 -> **Sept. 13, 2018**
Defendant's Pretrial Disclosures 6/30/18 -> **Sept. 28, 2018**
Defendant's 30-day Trial Period Ends 8/14/2018 -> **Nov. 12, 2018**
Plaintiff's 15-day Rebuttal Disclosures Due 8/29/2018 -> **Nov. 27, 2018**
Plaintiff's 15-day Rebuttal Period Ends 9/28/2018 -> **Dec. 27, 2018**
Plaintiff's Opening Brief Due 11/27/2018 -> **Feb. 25, 2019**
Defendant's Brief Due 12/27/2018 -> **March 27, 2019**
Plaintiff's Reply Brief Due 1/11/2019 -> **April 11, 2019**
Request for Oral Hearing (optional Due) 1/21/2019 -> **April 21, 2019**

Please let us know if the Applicant will agree to such an extension, or if you'd like to discuss further.

Best,
Jessica

Jessica T. Lu
Counselor at Law

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One Financial Center
Boston, MA 02111
T: 617.856.8583
F: 617.289.0760
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