

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Mailed: May 17, 2017

91233580

*Holla'back Records, Ent. & Talent Mgt.*

*v.*

*HBMG LLC*

**M. Catherine Faint,  
Interlocutory Attorney:**

This case now comes before the Board for consideration of Applicant's motion, filed May 4, 2017, to extend time to answer. The motion is contested. The Board exercises its discretion to consider the motion prior to filing a reply brief.

***Background***

The notice of opposition was filed March 22, 2017 and the Board's institution order issued March 25, 2017, setting time to answer as May 4, 2017. Applicant's attorney entered an appearance on the same date and seeks to extend time to answer for 60 days as she had been retained on May 3, 2017 and needs additional time to enter an answer. Opposer does not consent to the extension and argues the

replacement of counsel by Applicant was “within the reasonable control of Defendant” and does not meet the good cause standard.<sup>1</sup>

***Entry of Appearance***

Applicant’s attorney’s notice of appearance, filed May 4, 2017, is noted and made of record.

***Motion to Extend Time***

The standard for extending time is found in Fed. R. Civ. P. 6(b) (1), which reads in pertinent part:

*In General.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:

- (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires....

Ordinarily, 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 Prods., Inc. v. DowBrands Inc.*, 22 USPQ2d 1316 (TTAB 1992).

In this instance, the Board finds Applicant has shown good cause for the extension of time it seeks. Applicant sought the extension before its answer was due, there is no evidence it is acting in bad faith, and the Board is mindful of its policy to decide cases on their merits where possible. *See* TBMP §§ 312.02 and 509.01(a) (2017). However, the Board finds the length of time for the extension is overlong.

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<sup>1</sup> In its response to the motion, Opposer mentions Registration No. 378986, but the registration is cancelled or expired. Likewise, Registration No. 3789864 was cancelled under Trademark Act § 8 on Dec. 23, 2016.

Accordingly, Applicant's motion to extend is **granted** to the extent that an additional **30 days to answer** until June 13, 2017 is provided, as set out below.

***Pro Se Information***

It is noted that Opposer intends to represent itself in this proceeding.<sup>2</sup> While Patent and Trademark Rule 11.14 permits any person to represent itself, it is strongly advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. *See* TBMP § 114.02.

Trademark Rules 2.119(a) and (b) require that every submission filed in a proceeding before the Board must be served upon the other party or parties, and proper proof of such service must be made before the submission will be considered by the Board. Accordingly, all submissions filed in this proceeding must be accompanied by a statement, signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was made, the name of each party or person upon whom service was made, and the email address or address. *See* TBMP § 113.03. Service must be made by email unless otherwise stipulated, or unless the filing party has satisfied the requirements for another method of service as set forth in Trademark Rule 2.119(b). The statement will be accepted as prima facie proof

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<sup>2</sup> By its notice of opposition, Opposer states it is actively seeking counsel, but no counsel has entered an appearance on behalf of Opposer.

of service, must be signed and dated, and should take the form of a Certificate of Service as follows:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, address, and email address of opposing counsel or party).

Signature \_\_\_\_\_

Date \_\_\_\_\_

Submissions in Board proceedings must be made via ESTTA, the Electronic System for Trademark Trials and Appeals, and must be in compliance with Trademark Rules 2.126(a) and (b). *See* TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are at <http://estta.uspto.gov/>.

It is recommended that any pro se party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Parties should also be familiar with the Trademark Trial and Appeal Board Manual of Procedure (TBMP), available at <http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>, the TTABVUE system for viewing the record for all Board proceedings, available at <http://ttabvue.uspto.gov/ttabvue/>, and the Standard Protective Order, available at <https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0>.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are

represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*,  
81 USPQ2d 1212, n.2 (TTAB 2006).

***Schedule***

Time to Answer	June 13, 2017
Deadline for Discovery Conference	July 13, 2017
Discovery Opens	July 13, 2017
Initial Disclosures Due	August 12, 2017
Expert Disclosures Due	December 10, 2017
Discovery Closes	January 9, 2018
Plaintiff's Pretrial Disclosures Due	February 23, 2018
Plaintiff's 30-day Trial Period Ends	April 9, 2018
Defendant's Pretrial Disclosures Due	April 24, 2018
Defendant's 30-day Trial Period Ends	June 8, 2018
Plaintiff's Rebuttal Disclosures Due	June 23, 2018
Plaintiff's 15-day Rebuttal Period Ends	July 23, 2018
<b>BRIEFS SHALL BE DUE AS FOLLOWS:</b>	
Plaintiff's Main Brief Due	September 21, 2018
Defendant's Main Brief Due	October 21, 2018
Plaintiff's Reply Brief Due	November 5, 2018

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, matters in evidence, the manner and timing of taking testimony, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

**NOTICE: CHANGES TO THE TRADEMARK TRIAL AND APPEAL BOARD (“BOARD”) RULES OF PRACTICE EFFECTIVE JANUARY 14, 2017**

The USPTO published a Notice of Final Rulemaking in the Federal Register on October 7 2016, at 81 Fed. Reg. 69950. It sets forth **several** amendments to the rules that govern *inter partes* (oppositions, cancellations, concurrent use) and ex parte appeal proceedings. A correction to the final rule was published on December 12, 2016, at 81 Fed. Reg. 89382.

For complete information, the parties are referred to:

- The Board’s home page on the uspto.gov website:  
<http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>
- The final rule:  
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2069950.pdf>
- The correction to the final rule:  
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2089382.pdf>
- A chart summarizing the affected rules and changes:  
[http://www.uspto.gov/sites/default/files/documents/RulesChart\\_12\\_9\\_16.pdf](http://www.uspto.gov/sites/default/files/documents/RulesChart_12_9_16.pdf)

For **all** proceedings, including those **already in progress on January 14, 2017**, some of the changes are:

- All pleadings and submissions must be filed through ESTTA. Trademark Rules 2.101, 2.102, 2.106, 2.111, 2.114, 2.121, 2.123, 2.126, 2.190 and 2.191.
- Service of all papers must be made by email, unless otherwise stipulated. Trademark Rule 2.119.
- Response periods are no longer extended by five days for service by first-class mail, Priority Mail Express®, or overnight courier. Trademark Rule 2.119.
- Deadlines for submissions to the Board that are initiated by a date of service are 20 days. Trademark Rule 2.119. Responses to motions for summary judgment remain 30 days. Similarly, deadlines for responses to discovery requests remain 30 days.
- All discovery requests must be served early enough to allow for responses prior to the close of discovery. Trademark Rule 2.120. Duty to supplement discovery responses will continue after the close of discovery.
- Motions to compel initial disclosures must be filed within 30 days after the deadline for serving initial disclosures. Trademark Rule 2.120.
- Motions to compel discovery, motions to test the sufficiency of responses or objections, and motions for summary judgment must be

filed prior to the first pretrial disclosure deadline. Trademark Rules 2.120 and 2.127.

- Requests for production and requests for admission, as well as interrogatories, are each limited to 75. Trademark Rule 2.120.
- Testimony may be submitted in the form of an affidavit or declaration. Trademark Rules 2.121, 2.123 and 2.125
- New requirements for the submission of trial evidence and deposition transcripts. Trademark Rules 2.122, 2.123, and 2.125.
- For proceedings **filed on or after January 14, 2017**, in addition to the changes set forth above, the Board's notice of institution constitutes service of complaints. Trademark Rules 2.105(a) and 2.113(a).

This is only a summary of the significant content of the Final Rule. All parties involved in or contemplating filing a Board proceeding, regardless of the date of commencement of the proceeding, should read the entire Final Rule.

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