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

Proceeding	91235923
Party	Defendant David J. Witchell Salon & Spa, Inc.
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Submission	Motion to Extend
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Signature	/Frank J. Bonini, Jr./
Date	10/11/2018
Attachments	MotionToExtend.pdf(58894 bytes )

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

SIGNATURE AESTHETICS, LLC

Opposer,

v.

DAVID J. WITCHELL SALON &  
SPA, INC.,

Applicant.

Opposition No. 91235923

Application Serial No. 87/236339

Mark: EVERYONE WILL NOTICE  
BUT NO ONE WILL KNOW

**APPLICANT'S MOTION TO EXTEND  
DISCOVERY AND TRIAL DATES**

## **I. INTRODUCTION AND SUMMARY**

Applicant David J. Witchell, Salon & Spa, Inc. hereby moves the Board for an extension of time of ninety (90) days of the discovery in this case. Applicant also requests that the trial dates be extended by 90-days.

The request would reset the dates as follows:

Discovery Closes **January 12, 2019**

Plaintiff's Pretrial Disclosures Due **February 27, 2019**

Plaintiff's 30-day Trial Period Ends **April 13, 2019**

Defendant's Pretrial Disclosures Due **April 28, 2019**

Defendant's 30-day Trial Period Ends **June 11, 2019**

Plaintiff's Rebuttal Disclosures Due **June 26, 2019**

Plaintiff's 15-day Rebuttal Period Ends **July 26, 2019**

**BRIEFS SHALL BE DUE AS FOLLOWS:**

Plaintiff's Main Brief Due **September 24, 2019**

Defendant's Main Brief Due **October 24, 2019**

Plaintiff's Reply Brief Due **November 8, 2019**

Applicant believes that good cause exists for the extension.

This request is being made prior to the end of the discovery period.

## **II. FACTS**

The following facts support the need for the extension being sought in this case:

1. Applicant's principal underwent an emergency surgical procedure during the summer. Applicant's principal's condition involved about a six-week period of recovery,

and, when Applicant's principal resumed a normal course of activity, Applicant's principal had a backlog of matters (this one and others) to tend to as a result of undergoing surgery and the recovery period.

2. In the present case, Applicant served discovery on Opposer on July 31, 2018 via email, and, as of October 11, 2018, has not received any document production from Opposer.

3. Applicant's undersigned counsel followed up with counsel for Opposer, sending to counsel for Opposer via email on September 21, 2018 correspondence requesting, *inter alia*, that Opposer provide proper responses to remedy deficiencies in Opposer's discovery responses and produce documents. No documents or other response to that communication has been received.

4. Applicant's counsel reached out to counsel for Opposer on October 5, 2018, and again on October 9, 2018, including by telephone, leaving a voicemail each time, and following that with a contemporaneous email. Opposer's counsel did not reply until October 11, 2018, indicating that Opposer's counsel was waiting to hear back from the Opposer.

For these reasons, Applicant believes that good cause exists for making Applicant's motion and for the Board to grant it. By signing this pleading below Applicant's counsel attests to these facts with the included declaration below.

### **III. ARGUMENT**

The appropriate standard for allowing an extension of a prescribed period prior to the expiration of the term is "good cause." See Fed.R.Civ.P. 6(b) and Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 509 (2d ed. rev. 2004) and cases

cited therein. 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. See Sunkist Growers, Inc. v. Benjamin Ansehl Company, 229 USPQ 147, 149 (TTAB 1985).

In the present case, other than earlier requests for a suspension of proceedings for the parties to discuss settlement, this is the first request to extent the discovery deadline. Applicant's motion is being made prior to the close of discovery. Applicant's request is made in good faith and demonstrates the basis for a need for the extension, being that Applicant's principal's medical condition during the discovery period has limited Applicant's principal's ability to assist Applicant's counsel in discovery matters, and the fact that Applicant had not received documents and proper responses from Opposer to Applicant's discovery requests, and Applicant will need time to conduct any follow up discovery that may be necessary as a result of documents produced by Opposer (as well as to take depositions once Opposer has produced documents and properly responded). Applicant has followed up with counsel for Opposer, and has demanded documents be produced and the response deficiencies be remedied. Since, no response has been forthcoming by Opposer, Applicant, though attempting still to work out discovery matters with Opposer, may need to resort to the Board to resolve them<sup>1</sup>.

Applicant considers that it would be futile to attempt to notice and take discovery depositions of Opposer without documents and proper responses provided by Opposer.

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<sup>1</sup> Opposer's refusals to produce documents have even included objections based on confidentiality (responding to a request for documents evidencing Opposer's first use) which the Board has already addressed via its automatic protective order. In addition, Opposer has even objected to discovery of subject matter involving channels of trade, relatedness or unrelatedness of services, and actual confusion. Opposer considers them not relevant.

Applicant's counsel reached out to counsel for Opposer on October 5, 2018, and again on October 9, 2018, including by telephone, leaving a voicemail each time, and following that with a contemporaneous email. Opposer's counsel did not reply until October 11, 2018, indicating that counsel was waiting to hear back from the client (Opposer). Therefore, Applicant attempted to obtain Opposer's counsel's consent to this extension, but consent has not been provided.

Accordingly, Applicant requests for the reasons set forth herein that this motion to extend the discovery period and trial dates by 90 days be granted.

#### **Declaration as to Facts**

The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that the statements of fact presented in the fact paragraphs 1 – 4 above made of his own knowledge are true and all statements made on information and belief are believed to be true.

Respectfully submitted,

Dated: October 11, 2018

/Frank J. Bonini, Jr./

Frank J. Bonini, Jr. ((Reg. No. 35,452)  
John F. A. Earley III (Reg. No. 31,350)  
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***ATTORNEYS FOR APPLICANT  
DAVID J. WITCHELL SALON & SPA, INC.***

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**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the following:

1. APPLICANT'S MOTION TO EXTEND DISCOVERY AND TRIAL DATES,  
and
2. CERTIFICATE OF SERVICE,

were served on the following, via Email and First Class Mail on October 11, 2018:

SIGNATURE AESTHETICS, LLC.  
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Dated: October 11, 2018

/Frank J. Bonini, Jr./

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***DAVID J. WITCHELL SALON & SPA, INC.***