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

Proceeding	91239468
Party	Plaintiff Sun Pharmaceutical Industries, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Sun Pharmaceutical Industries, Inc.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Proceeding No. 91239468
	)	
Jeremy Sunseri	)	
	)	
Defendant.	)	

**PLAINTIFF’S MOTION TO REOPEN**

Pursuant to Section 2.116(a) of the Rules of Practice in Trademark Cases, 37 *CFR* §2.116(a), Plaintiff, Sun Pharmaceutical Industries, Inc. (“Sun Pharmaceutical”), respectfully requests the Trademark Trial and Appeal Board (the “Board”) reopen the time for Sun Pharmaceutical to provide its pretrial disclosures and extend the disclosure deadline by 30 days to March 5, 2020.

**BACKGROUND**

Sun Pharmaceutical initiated this opposition proceeding on February 11, 2018 alleging priority and likelihood of confusion regarding the name “Sun Dermatology” and various trademarks that include the word “Sun”. (*See* Prosecution History, Dkt. 1). In March 2019, Sun Pharmaceutical issued written discovery to Defendant, Jeremy Sunseri (“Defendant”), seeking, among other things, the identity of all persons Defendant had granted a license to use the “Sun Dermatology” mark that is the subject of this opposition (the “Mark”), the identity of all employers or partners of Defendant who provide services in connection with the Mark, and the manufacturers of all goods offered for sale in connection with the Mark, including manufacturers

of packaging for such goods. Defendant failed to respond to these requests by the close of discovery.

Following the close of discovery, the parties sought routine extensions and/or suspensions of the scheduling deadlines pending settlement negotiations. (*See* Prosecution History, Dkts. 8-20, 22-26). On December 12, 2019, the Board suspended the proceedings until January 11, 2020 and extended all deadlines 30 days, including the due date for Sun Pharmaceutical's pretrial disclosures, which was extended to January 12, 2020. (*Id.* at Dkt. 27). Although the parties successfully negotiated several portions of a settlement agreement, over the course of the latest extension they confirmed they would be unable to reach a resolution. Because Defendant never answered Sun Pharmaceutical's discovery which would inform its pretrial disclosures, Sun Pharmaceutical requests the Board reopen the time for Sun Pharmaceutical to provide its pretrial disclosures, extend the deadline by 30 days to March 5, 2020, and require Defendant to respond to the long outstanding discovery requests.

## **ARGUMENT**

Pursuant to Federal Rule of Civil Procedure 6(b) made applicable to Board proceedings by 37 C.F.R. § 2.116(a), a party may file a motion for an extension of the time in which an act may or must be done. If the motion is not filed until after the expiration of the period as previously extended, the moving party must show that its failure to act during the time previously allowed was the result of excusable neglect. The excusable neglect determination must take into account all relevant circumstances surrounding the party's omission or delay, including (1) the danger of prejudice to the nonmovant, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was

within the reasonable control of the movant, and (4) whether the movant acted in good faith. *See FirstHealth of the Carolinas Inc. v. CareFirst of Maryland Inc.*, 479 F.3d 825, 829, 81 USPQ2d 1919 (Fed. Cir. 2007).

Taking these factors in order, the first factor, “prejudice to the nonmovant”, weighs in favor of a finding of excusable neglect. Prejudice to the nonmovant is not mere inconvenience to the nonmovant, but rather prejudice to the nonmovant’s ability to litigate the case. *Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582, 1587 (TTAB 1997) (citing *Pratt v. Philbrook*, 109 F.3d 18 (1st Cir. 1997)). In the instant matter, Defendant has not suffered any prejudice to his ability to litigate this case, and will not suffer any such prejudice if the deadlines are extended by 30 days, as he will still be afforded the same amount of time to make his pretrial disclosures.

Second, Sun Pharmaceutical’s delay is minimal and has had little, if any, impact on these proceedings. Less than a month has passed between the close of the period for Sun Pharmaceutical to file its pretrial disclosures and the filing of this motion to reopen. Furthermore, this delay has had no substantial impact on this proceeding as this case has been suspended for more than a year based on the parties’ ongoing settlement negotiations. A short delay until March 5, 2020 will not further impact these proceedings in any substantial way.

Third, Sun Pharmaceutical’s delay in this matter is premised on (1) Defendant’s failure answer Sun Pharmaceutical’s written discovery requests and (2) the discontinuation of settlement negotiations. Because Defendant failed to answer or respond to *any* discovery issued by Sun Pharmaceutical, including identifying those that Defendant granted permission to use the Mark, employers of Defendant who provide services in connection with the Mark, and manufacturers of all goods offered for sale in connection with the Mark, Sun Pharmaceutical could not fully determine the identities of the witnesses it may call at trial in the limited period between when

negotiations ended and when its pretrial disclosures were due. Given that the purpose of pretrial disclosures is to allow parties to know the identity of trial witnesses prior to trial, thus avoiding surprise witnesses, Sun Pharmaceutical needed more time between the end of settlement negotiations and the disclosure due date to fully investigate the identity of its potential witnesses in order to provide accurate disclosures. *See Domond v. 37.37, Inc.*, 113 USPQ2d 1264, 1267 (TTAB 2015) (noting the parties are required to name the witnesses expected to testify in the pretrial disclosures). Because Defendant's failure to provide information during discovery, coupled with the late-breakdown of settlement negotiations, caused Sun Pharmaceutical's inability to fully draft its pretrial disclosures in a timely manner this factor likewise weighs in favor of finding excusable neglect.

Finally, Sun Pharmaceutical has acted in good faith, not only with respect to the filing of this motion, but throughout this pendency of this opposition proceeding. Accordingly, the final factor also weighs in favor of a finding of excusable neglect.

**WHEREFORE**, Plaintiff, Sun Pharmaceutical Industries, Inc., requests that the Trademark Trial and Appeal Board reopen the time for Sun Pharmaceutical to provide its pretrial disclosures and extend the disclosure deadline by 30 days to March 5, 2020, with all following dates to likewise be extended. Furthermore, Sun Pharmaceutical requests that the Trademark Trial and Appeal Board require Defendant to respond to the long outstanding discovery requests.

Dated: February 4, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that a copy of this Plaintiff's Motion to Reopen was filed with the Trademark Trial and Appeal Board and sent by electronic mail this 4th day of February, 2020 to:

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