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

Proceeding	91239589
Party	Plaintiff Maker's Mark Distillery, Inc.
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Submission	Motion to Extend
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Signature	/Daniel P. Virtue/
Date	09/23/2019
Attachments	Motion for Extension of Time to Submit Response to Motion for Summary Judgment.pdf(781470 bytes)

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

MAKER'S MARK DISTILLERY, INC.,

Opposer,

v.

BOWMAKER'S WHISKEY COMPANY,

Applicant.

Opposition No. 91239589

Serial No. 87,383,989

Mark: BOWMAKER'S WHISKEY

**MOTION FOR EXTENSION OF TIME TO SUBMIT RESPONSE TO
MOTION FOR SUMMARY JUDGMENT**

Pursuant to 37 CFR § 2.116(a), 37 CFR § 2.127(e)(1) and TBMP § 509.01(a), Opposer Maker's Mark Distillery, Inc. ("Opposer") respectfully requests an eleven-day extension (to October 11, 2019) of the deadline to file an opposition to Bowmaker's Whiskey Company's ("Applicant") motion for summary judgment. Opposer sought Applicant's consent prior to filing the instant motion, but Applicant refused. (See Exhibit A). Opposer bases its motion on the need to review additional internal documents and on prior commitments of counsel, both of which bear on the ability of Opposer to present the Board with a more complete response.

I. FACTUAL BACKGROUND

On December 21, 2018, Applicant filed a motion for summary judgment. Opposer, on January 22, 2019, filed a timely motion for Fed. R. Civ. P. 56(d) discovery, requesting the extension of the general discovery period or, in the alternative, allowing specific additional discovery be taken in order to enable Opposer to effectively respond to the summary judgment motion (18 TTABVUE 1). The Board issued an order on July 2, 2019 permitting the Opposer to

take the Rule 56(d) discovery deposition of Mr. Bryan Parks. Opposer was allowed forty-five days (*i.e.*, by August 16, 2019) from the mailing date of the Order in which to notice and complete the deposition. The Order also required the Applicant to respond to Opposer's Interrogatory Nos. 9, 13 and 14 and Document Request Nos. 1, 5, and 7-10 within twenty days from the mailing date of the Order (*i.e.*, by July 22, 2019). Finally, the Order set the deadline of ninety days, (*i.e.*, by September 30, 2019) for the Opposer to file and serve its brief in opposition to Applicant's outstanding motion for summary judgment. *Id.*, at 5-6.

Applicant served its responses to the outstanding Interrogatory and Document Requests on July 19, 2019, three days prior to the Order deadline. After discussions, Opposer and Applicant agreed upon July 24, 2019, twenty-three days prior to the Order deadline, to take the deposition of Mr. Parks. During the deposition, Applicant requested confidential treatment for portions of the deposition, and asked counsel to treat the entire deposition transcript as attorneys' eyes only until formal designations were made. (Exhibit B, Parks Deposition, 40:12-21).

The court reporter transcribing the deposition delivered the final transcript to Opposer and Applicant on August 5, 2019. On August 6, 2019, Opposer confirmed Applicant received the final transcript and requested Applicant make confidential designations to the 41-page transcript under the Board's Standard Protective Order. (Exhibit C (personal communication redacted)). Applicant made those designations 22 days later (on August 28, 2019), which only then permitted Opposer's counsel to share the transcript with Opposer.

On September 12, 2019, Opposer requested consent from Applicant for a fourteen-day extension to submit its brief, which was declined on September 13, 2019. Opposer now seeks a slightly shorter extension in light of the holiday on October 14, 2019.

II. ARGUMENT

Pursuant to Fed. R. Civ. P. 6(b)(1), a party that files a motion to extend the time in which to act prior to the expiration of the period as originally set or previously extended need only show “good cause” for the requested extension. See TBMP § 509.01(a). The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. See *Nat’l Football League v. DNH Mgmt. LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008); *Am. Vitamin Prod., Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313 (TTAB 1992). The party moving to extend time must set forth with particularity the facts said to constitute good cause for the requested extension and must demonstrate that the need for extension is not due to the party’s own lack of diligence or unreasonable delay in taking the required action within the time previously allotted. *Nat’l Football League*, 85 USPQ2d at 1854; *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758, 1760-61 (TTAB 1999).

Opposer’s brief is currently due September 30, 2019. Opposer has met all deadlines, with no unwarranted delay, set forth in the Board’s July 2 order. Opposer is making this request on the following grounds. First, Opposer continues to gather documents from its own files relevant to the issues raised in Applicant’s motion for summary judgment, including documents relevant to facts confirmed in Mr. Park’s deposition, including his prior familiarity with Opposer’s MAKER’S MARK brand. Second, Opposer makes this request to accommodate a number of scheduling conflicts for Opposer’s counsel, including several deadlines for pending matters. Opposer also notes that Applicant took 22-days to submit confidentiality designations to the 41-page Parks deposition transcript. While this time lapse comports with the rules, this delayed counsel’s ability to discuss the transcript with its client. Given the potential for summary judgment to be case

dispositive, Opposer seeks this extension of time so that it will have sufficient time to prepare its arguments in this matter.

This request is made in good faith, without any intent to cause delay or prejudice, and with the sole purpose of providing Opposer sufficient time to complete the filing of its brief. In view of the above, Opposer respectfully submits that good cause for the extension has been shown and that, accordingly, the requested time extension should be granted.

Respectfully submitted,

MAKER'S MARK DISTILLERY, INC.

Dated: September 23, 2019

By: /s/ Richard M. Assmus
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Attorneys for Opposer

CERTIFICATE OF SERVICE

I certify that, on September 23, 2019, I caused a copy of the foregoing **MOTION FOR EXTENSION OF TIME TO SUBMIT RESPONSE TO MOTION FOR SUMMARY JUDGMENT** to be served upon Bowmaker's Whiskey Company by e-mail at the following addresses:

tbreiner@bbpatlaw.com, elisedelatorre@bbpatlaw.com, docketclerk@bbpatlaw.com

With courtesy copies sent by USPS Express mail to Bowmaker's Whiskey Company at the following address:

Theodore A. Breiner
Breiner & Breiner LLC
115 North Henry Street
Alexandria, VA 22314

Dated: September 23, 2019

/s/ Daniel Virtue
Daniel Virtue
Attorney for Opposer
Maker's Mark Distillery, Inc.

EXHIBIT A

Virtue, Daniel

From: Ted Breiner <TBreiner@BBPatLaw.com>
Sent: Friday, September 13, 2019 11:04 AM
To: Assmus, Richard M.
Cc: Virtue, Daniel
Subject: RE: Bowmakers

****EXTERNAL SENDER****

Hi Rich,

We have conferred with the client and the client does not agree to an extension for filing the Maker's Mark brief based on the circumstances of this case.

Best regards,

Ted Breiner
703-684-6885
tbreiner@bbpatlaw.com
Breiner & Breiner, L.L.C.
115 North Henry Street
Alexandria, VA 22314
Fax: 703-684-8206

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From: Assmus, Richard M. <RAssmus@mayerbrown.com>
Sent: Thursday, September 12, 2019 2:40 PM
To: Ted Breiner <TBreiner@BBPatLaw.com>
Cc: Virtue, Daniel <DVirtue@mayerbrown.com>
Subject: Bowmakers

Ted—

In light of some travel, we would like to request until October 11 to file our brief opposing summary judgment. (The original due date is September 30.) We are happy to also extend the 20-day deadline on your reply if that proves needed on your end.

Can you let us know?

Thanks,

Rich

+++++

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EXHIBIT B

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

3
4 MAKER'S MARK DISTILLERY, INC.,
5 Opposer,

6 vs.

 Opposition No. 91239589

7 Serial No. 87/383,989

8 Mark: Bowmaker's Whiskey

9 BOWMAKER'S WHISKEY COMPANY,
10 Applicant.

11 _____
12
13
14 The Deposition of BRYAN PARKS,
15 Taken at 277 South Rose Street, Suite 5000,
16 Kalamazoo, Michigan,
17 Commencing at 8:57 a.m.,
18 Wednesday, July 24, 2019,
19 Before Alison C. Webster, CSR-6266, RPR, RMR, CRR.

20
21
22
23
24
25 Job No: 164769

1 BRYAN PARKS

2 You can answer.

3 A. There are half a dozen stores or more. I can't tell
4 you exactly which all of them are.

5 BY MR. ASSMUS:

6 Q. Do you have a favorite?

7 A. Mega-Bev is one I would frequent.

8 Q. Do they sell Maker's Mark there?

9 A. They do.

10 MR. ASSMUS: I don't have any further
11 questions.

12 MR. BREINER: I don't have any questions.
13 And as we said before, the deposition, under the
14 board's rules, is to be maintained confidential for a
15 certain period of time -- I can't recall what that
16 is -- and so I would like counsel to treat it that way
17 and then, when we get the transcript, we will go
18 through the transcript and tell you what sections
19 should be confidential and which sections should be
20 confidential attorneys' eyes only.

21 MR. ASSMUS: Very good. Thank you.

22 MR. BREINER: And the witness would like to
23 read and sign the deposition.

24 MR. ASSMUS: Great. Signature is reserved.


25 Thank you very much, Mr. Parks, for your

EXHIBIT C

Virtue, Daniel

From: Virtue, Daniel
Sent: Tuesday, August 06, 2019 5:08 PM
To: 'Ted Breiner'; Assmus, Richard M.
Cc: Adams, Michael D.
Subject: RE: Maker's Mark v. Bowmaker's Whiskey

Ted,

 We received the final version of the deposition transcript and wanted to confirm that you received a copy and to ask when you are expecting to make your designations and send to us?

Best,

Dan

Daniel P. Virtue

Staff Attorney

Mayer Brown LLP

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