

ESTTA Tracking number: **ESTTA891689**

Filing date: **04/23/2018**

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

Proceeding	91239969
Party	Plaintiff Debra Kashiwabara
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Date	04/23/2018
Attachments	P-KASHIWABARA OPPOSITION TO APPLICANT REQ FOR EXTENSION WITH CORRECTED CERT OF SERVICE-2018-04-23.pdf(37105 bytes)

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

11 DEBRA KASHIWABARA,

12 Opposer,

13 vs.

14 KERRY LUXEMBOURG S.A.R.L.,

15 Applicant.

Opposition No. 91239969

**OPPOSITION TO APPLICANT'S REQUEST
FOR EXTENSION OF TIME TO FILE
ANSWER TO OPPOSITION**

16 TO THE COMMISSIONER OF TRADEMARKS:

17 In the Matter of Application Serial No. 79/168972
18 Mark: NUTRIVIE

19 OPPOSER opposes Applicant's Request for Extension of Time to File Answer to the
20 Opposition and requests that Applicant's Request be denied because Applicant fails to meet the
21 requirements for an extension as set forth in TBMP §509.01(a).

22 OPPOSER served and filed her Notice of Opposition with Exhibits (hereinafter "Opposition")
23 on February 8, 2018, on which date the undersigned delivered a courtesy copy of the Opposition by
24 email on Applicant's counsel. On February 9, 2018, Applicant's counsel acknowledged receipt of the
25 Opposition. See, Exhibit 1.

26 Applicant has had a copy of the Opposition, and all the Exhibits attached thereto, since at
27 least February 9, 2018.

28 The answer was required to be filed by April 21, 2018.¹ On April 19, 2018, sixty nine days
after receiving the Opposition, Applicant's counsel requested a 60-day extension of time to answer,
stating:

¹ For reasons that are unclear to OPPOSER'S counsel, there was delay by the TTAB in processing the Opposition that was filed on February 8, 2018.

1 Before proceeding further with the Opposition, we would like to request a 60 day
2 extension to file the Answer so we may have the opportunity to discuss the
3 possibility of a co-existence agreement with your client, will you please confirm
4 your consent to the extension.

4 Applicant made no mention of any difficulty in reaching her client.

5 Thus, by the time of Applicant's April 19th request for a 60-day extension, Applicant had the
6 Opposition for sixty nine (69) days, during which time Applicant's counsel made no attempt to
7 communicate with OPPOSER about any matter, to say nothing about any difficulty in reaching the
8 client. OPPOSER denied the request because Applicant had had the Opposition for 69 days and
9 stated settlement negotiations may take place after Applicant's Answer is filed. Applicant's counsel
10 acknowledged the denial of the extension request. See, Exhibit 2.

11 Applicant's Request fails to meet the requirements of the governing rule, TBMP §509.01(a)
12 which states:

12 **509.01(a) Motions to Extend Time**

13 A motion to extend must set forth with particularity the facts said to constitute good
14 cause for the requested extension; *mere conclusory allegations lacking in factual detail
15 are not sufficient.* [Note 1.]

15 *Moreover, a party moving to extend time must demonstrate that the requested
16 extension of time is not necessitated by the party's own lack of diligence or
17 unreasonable delay in taking the required action during the time previously allotted
18 therefor.* [Note 2.] The Board will "scrutinize carefully" any motion to extend time, to
19 determine whether the requisite good cause has been shown. [Note 3.]

18 (Emphasis added.)

19 Applicant has failed to set forth with particularity facts said to constitute good cause; has
20 offered mere conclusory allegations lacking in factual detail which are not sufficient, and has failed
21 to demonstrate that the requested extension of time is not necessitated by Applicant's own lack of due
22 diligence in taking the required action during the time previously allotted therefor.

23 Applicant's request fails to meet any of the TTAB requirements. The TTAB has regularly
24 rejected motions of this kind that fail to meet the requirements of 509.01(a). The cases referred to in
25 the Notes require the denial of Applicant's extension request.

26 *SFW Licensing Corp. v. Di Pardo Packing Ltd.*, 60 USPQ2d 1372, 1373 (TTAB 2001)
27 (opposers had not come forward with "detailed facts" required to carry their burden explaining their
28 inaction); *Instruments SA Inc. v. ASI Instruments Inc.*, 53USPQ2d 1925, 1927 (TTAB 1999) (cursory

1 or conclusory allegations that were denied unequivocally by the non-movant and were not otherwise
2 supported by the record did not constitute a showing of good cause); *Luemme, Inc. v. D. B. Plus Inc.*,
3 53 USPQ2d 1758, 1760-61 (TTAB 1999) (sparse motion contained insufficient facts on which to find
4 good cause); *National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB
5 2008) (“the Board is liberal in granting extensions of time before the period to act has elapsed so long
6 as the moving party has not been guilty of negligence or bad faith and the privilege of extension is
7 not abused” and the moving party has the burden of persuading the Board that it was diligent in
8 meeting its responsibilities; motion denied because opposer failed to make the minimum showing
9 necessary to establish good cause to extend discovery); *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d
10 1758, 1760-61 (TTAB 1999) (diligence not shown; discovery requests not served until last day of the
11 discovery period); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Manufacturing Co.*, 55
12 USPQ2d 1848, 1851 (TTAB 2000) (applicant’s motion to extend discovery denied when counsel
13 knew of unavailability of witness a month before, yet delayed until last day to seek an agreement on
14 an extension of time).

15 Applicant’s counsel has always known that Applicant is located in Luxembourg. Applicant
16 and its counsel have had more than two months to consult, decide upon a course of action and issue
17 instructions to its counsel. Applicant has failed to offer factual detail explaining its lack of diligence;
18 has failed to demonstrate that the requested extension is not the result of its own lack of diligence;
19 and has failed to show good cause for an extension.

20 *WHEREFORE*, Opposer requests that Applicant’s Request for Extension of Time to File
21 Answer to Opposition be *denied*.

22 DATED: April 23, 2018
23 San Francisco, CA

LAW OFFICES OF ABE LAMPART, P.C.

24 By: /Abe Lampart/
25 ABE LAMPART
26 Attorneys for Opposer
27 DEBRA KASHIWABARA

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office by ESTTA:

April 23, 2018

/Abe Lampart/

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CERTIFICATE OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is the Law Offices of Abe Lampart, 456 Montgomery Street, Suite 1300, San Francisco, California 94104.

On April 23, 2018, I served the following document(s) on the parties listed below as follows:
OPPOSITION TO APPLICANT’S REQUEST FOR EXTENSION OF TIME TO FILE ANSWER TO OPPOSITION

Jody H. Drake, Esq.
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- By facsimile machine (FAX)** by personally transmitting a true copy thereof via electronic facsimile machine.
- By E-Mail/PDF** by personally transmitting a true copy thereof via electronic mail to the addressee(s) listed herein at the locations(s) listed herein.
- By first class mail: Certified Mail, Return Receipt Requested** by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid and placing the envelope in the mail at San Francisco, California.
- By personal service** by causing to be personally delivered a true copy thereof to the addressee(s) listed herein at the location(s) listed herein.
- By Federal Express**
- (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 23, 2018 at San Francisco, California.

/s/ _____
Abe Lampart