

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
General Email: TTABInfo@uspto.gov

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December 1, 2021

Opposition No. 91217941 (Parent)

Opposition No. 91217992

Opposition No. 91218267

Robert Kirkman, LLC

v.

Phillip Theodorou and Anna Theodorou

Opposition No. 91222005

Opposition No. 91222719

Opposition No. 91227277

Opposition No. 91233571

Opposition No. 91233806

Opposition No. 91240356

Cancellation No. 92068261

Cancellation No. 92068613

Robert Kirkman, LLC

v.

Steve Theodorou and Phillip Theodorou

Ashley D. Hayes, Interlocutory Attorney:

These consolidated proceedings now come up for consideration of the contested motion, filed September 20, 2021, by Phillip Theodorou, Anna Theodorou, and Steven

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Theodorou (herein collectively, “Defendants”), for a sixty to ninety day extension of time to file their trial brief. 57 TTABVUE.¹

Defendants contend the extension is warranted because they are pro se litigants and “this is complex litigation that involves extensive research to marshal the facts and adequately prepare a response.”² 57 TTABVUE 4 (¶ 2).³

In response, Plaintiff argues, inter alia, that this proceeding involves straightforward claims of likelihood of confusion and dilution and that Defendants have failed to demonstrate good cause for the extension because the motion is silent as to their diligence in preparing their trial brief. 58 TTABVUE 3-4. Additionally, Opposer points out that this proceeding has been ongoing for seven years, *id.*, during

¹ Citations to the record or briefs in this order include citations to the publicly available documents on TTABVUE, the Board’s electronic docketing system. *See, e.g., Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). The number preceding “TTABVUE” corresponds to the docket entry number; the number(s) following “TTABVUE” refer to the page number(s) of that particular docket entry. Citations to the record herein are to Opposition No. 91217941, the parent proceeding, unless otherwise indicated.

² Defendants are reminded that each individual defendant must personally sign every submission (or input his or her electronic signature thereon) filed with the Board. *See* Trademark Rules 2.119(e) and 2.193(a), 37 C.F.R. §§ 2.119(e) and 2.193(a); *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 106.02 (2021). An individual defendant acting pro se may not sign a document to be submitted to the Board on behalf of another individual defendant acting pro se. *See* Patent and Trademark Rule 11.14, 37 C.F.R. § 11.14 (individuals who are not attorneys are not recognized to practice before the United States Patent and Trademark Office (“USPTO”) in trademark matters, with limited exceptions inapplicable to this proceeding).

³ The Board notes that although Defendants reference their “substantial claims,” 57 TTABVUE 4, Defendants did not assert a counterclaim to cancel any of the registrations pleaded by Robert Kirkman, LLC (herein “Plaintiff”) in any of the consolidated Opposition or Cancellation proceedings. *See* 24 TTABVUE (Opp. Nos. 91217941, 91217992, 91218267, 91222005, 91222719, 91227277, 91233571, 91233806), 5 TTABVUE (Opp. No. 91240356), 4 TTABVUE (Opp. No. 92068261), and 6 TTABVUE (Opp. No. 92068613).

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which Defendants have filed numerous motions contributing to the lengthy duration of this proceeding. *Id.* at 4.⁴

The standard for allowing an extension of a prescribed period prior to the expiration of that period as originally set, or as reset, is good cause. *See* Fed. R. Civ. P. 6(b)(1)(A); *Trans-High Corp. v. JFC Tobacco Corp.*, 127 USPQ2d 1175, 1176 (TTAB 2018). Here, Defendants filed their motion prior to the September 24, 2021 deadline for submitting their trial brief. 53 TTABVUE 4. Accordingly, the proper standard to apply is good cause.

“Generally, the Board is liberal in granting extensions of time before the specified period 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.” *Trans-High Corp.*, 127 USPQ2d at 1177 (citing *Am. Vitamin Prods., Inc. v. Dowbrands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992)). However, the moving party retains the burden of persuading the Board that it was diligent in meeting its responsibilities and should therefore be awarded additional time. *See Nat'l Football League v. DNH Mgmt., LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008) (citing *Sunkist Growers, Inc. v. Benjamin Ansehl Co.*, 229 USPQ 147 (TTAB 1985)). Additionally, the motion to extend “must set forth with particularity the facts said to constitute good cause; ‘cursory or conclusory allegations that are denied unequivocally by the nonmovant, and that are not otherwise supported by the record, will not constitute a showing of good cause.’”

⁴ The Board has considered the parties’ briefs but addresses the record only to the extent necessary to set forth the Board’s analysis and findings, and does not repeat or address all of the parties’ arguments. *See Guess? IP Holder LP v. Knowlux LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015).

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Trans-High Corp., 127 USPQ2d at 1777 (quoting *Instruments SA, Inc. v. ASI Instruments, Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999)). Further, the Board has found mere unexplained delay in initiating action in an affected time period does not constitute good cause. See *Luehrmann v. Kwik Kopy Corp.*, 2 USPQ2d 1303, 1305 (TTAB 1987). If a motion to extend is denied, dates may remain as originally set or as reset. See Trademark Rule 2.121(c), 37 C.F.R. § 2.121(c).

Here, Defendants provide no explanation for why they waited until only four days before their trial brief was due to file their motion to extend. Moreover, while the Board is aware that Defendants are not represented by an attorney, they nevertheless bear the burden of complying with the Board's rules.⁵ See *Hole In 1 Drinks, Inc. v. Lajtay*, 2020 USPQ2d 10020, at *3 (TTAB 2020) (Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure and the Federal Rules of Evidence, is required of all parties, whether or not they are represented by counsel.) (Citation omitted.).

Defendants' cursory argument that the case is "complex" and requires "extensive research to marshal the facts and adequately prepare a response" 57 TTABVUE 4 (¶ 2), is insufficient to demonstrate good cause for the requested extension. As an

⁵ The Board advised Defendants early in this proceeding that it is "generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in opposition proceeding to secure the services of an attorney who is familiar with such matters." 10 TTABVUE 3-4. Defendants were also informed that the "Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this proceeding," and that the Trademark Rules of Practice and TBMP are available on the TTAB page of the USPTO's website." *Id.* at 4. Defendants were further warned that the USPTO is justified in enforcing its procedural deadlines. *Id.* at 5.

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initial matter, this proceeding is hardly at a “preliminary stage,” as asserted by Defendants. *Id.* (¶ 3). On the contrary, it has been pending for seven years and is in the last stages of briefing prior to a final determination. At this late stage of the proceeding, pro se or not, Defendants should be well aware of the facts they contend demonstrate that Plaintiff cannot prevail on its claims. Moreover, notwithstanding that eight proceedings are consolidated herein, the only grounds asserted in each proceeding are likelihood of confusion and dilution. *See* 1 TTABVUE (91217941, 91217992, 91218267, 91222005, 91222719, 91227277, 91233571, 91233806, 91240356, 92068261, and 92068613). Additionally, Plaintiff relies on its registered marks THE WALKING DEAD and putative abbreviation TWD to oppose the subject applications and registrations for the marks THE WALKDING DEAD and TWD. *See id.* Further, Defendants fail to provide any detail regarding: (i) the manner in which they contend the proceeding is “complex;” (ii) the nature of the research they contend is necessary at this late stage of the proceeding to marshal the facts; (iii) what efforts they previously made to conduct that research; and (iv) why they were unable to complete the research in sufficient time to file their brief. In view of the foregoing, the Board finds Defendants have failed to demonstrate good cause for an extension of time to file their trial brief. Accordingly, Defendants’ motion to extend is **DENIED**.

Notwithstanding the Board’s determination above, the Board, in its discretion, finds it appropriate to allow Defendants **FIFTEEN (15) DAYS** from the date of this order to file their brief. Accordingly, these proceedings are **RESUMED** and trial dates are reset as follows:

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Defendant's Brief Due	12/16/2021
Plaintiff's Reply Brief Due	12/31/2021
Request for Oral Hearing (optional) Due	1/10/2022

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, 37 C.F.R. §§ 2.121-2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, 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), 37 C.F.R. §§ 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), 37 C.F.R. § 2.129(a).