

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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December 31, 2018

Opposition No. 91242944

Louisiana Spirits, LLC

v.

Serio Southern Spirits, LLC

**Katie W. McKnight,
Interlocutory Attorney:**

On September 4, 2018, Applicant filed an unconsented motion to extend by ninety days its time to file and serve an answer to the notice of opposition. The Board suspended proceedings on September 4, 2018. Opposer filed its opposition to Applicant's motion on September 24, 2018.¹ Applicant filed its answer on December 4, 2018.²

¹ The Board notes that Opposer served its response on Applicant via U.S. Mail. Opposer is reminded that under the amended rules, effective January 14, 2017, service must be made by email, unless the parties stipulate otherwise. *See* Miscellaneous Changes to Trademark Trial and Appeal Board Rules of Practice, 81 Fed. Reg. 69950 (Oct. 7, 2016); Trademark Rule 2.119(b). Strict compliance with Trademark Rule 2.119 is required by the parties in all future papers filed with the Board.

² Applicant's answer fails to indicate proof of service on Opposer via email as required by Trademark Rule 2.119. In order to expedite this matter, Opposer is directed to the following URL where it may view a copy of the filing:

<http://ttabvue.uspto.gov/ttabvue/v?pno=91242944&pty=OPP&eno=7>.

Strict compliance with Trademark Rule 2.119 is required by Applicant in all future papers filed with the Board. The Board further notes Applicant's December 14, 2018 filing which

The Board's August 10, 2018 order notified Applicant of its September 19, 2018 deadline to file and serve its answer to Opposer's notice of opposition. Applicant argues that the Board's institution order was "sent to an erroneous email address" and Applicant needs a ninety day extension of time "to prepare [its] documents."³ In response, Opposer argues that the Board served notice of the proceeding on Applicant's email and correspondence address of record, and Applicant fails to explain why its email address of record was erroneous or why it did not file a change of address.⁴

The appropriate standard for allowing an extension of time prior to the expiration of the term is good cause. *See* Fed. R. Civ. P. 6(b); TBMP § 509 (2018). 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 Am. Vitamin Products, Inc. v. Dowbrands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992). The moving party, however, retains the burden of persuading the Board that it was diligent in meeting its responsibilities and should therefore be awarded additional time. *See Sunkist Growers, Inc. v. Benjamin Ansehl Co.*, 229 USPQ 147, 149-50 (1985).

appears to include a certificate of service with Applicant's answer originally filed on December 4, 2018. *See* 8 TTABVUE.

³ 4 TTABVUE 2.

⁴ 6 TTABVUE 5. While Opposer is correct that Applicant did not serve its subject motion to extend on Opposer, the Board did provide a copy of the motion to Opposer by its suspension order dated September 4, 2018.

The law strongly favors determination of cases on their merits. *See Delorme Publ'g Co., Inc. v. Eartha's, Inc.*, 60 USPQ2d 1222, 1223 (TTAB 2000) (citing *CTRL Sys. Inc. v. Ultraphonics of North America Inc.*, 52 USPQ2d 1300, 1301 (TTAB 1999)). Inasmuch as Applicant claims it only just retrieved the Board's notice of institution order as of September 4, 2018, is not currently represented by counsel in this proceeding, this is its first unconsented motion to extend, and Opposer has pointed to no specific harm or prejudice which would result to Opposer,⁵ Applicant's motion is **granted**. Applicant's answer, which consists of a general denial of the allegations in Opposer's notice of opposition, is accepted. *See* Fed. R. Civ. P. 8(b)(3); TBMP § 311.02(a) and authorities cited therein.

Proceedings are **resumed**. Dates are reset as follows:⁶

Deadline for Discovery Conference	January 30, 2019
Discovery Opens	January 30, 2019
Initial Disclosures Due	March 1, 2019
Expert Disclosures Due	June 29, 2019
Discovery Closes	July 29, 2019
Plaintiff's Pretrial Disclosures Due	September 12, 2019
Plaintiff's 30-day Trial Period Ends	October 27, 2019
Defendant's Pretrial Disclosures Due	November 11, 2019
Defendant's 30-day Trial Period Ends	December 26, 2019
Plaintiff's Rebuttal Disclosures Due	January 10, 2020
Plaintiff's 15-day Rebuttal Period Ends	February 9, 2020
BRIEFS ARE DUE AS FOLLOWS:	
Plaintiff's Main Brief Due	April 9, 2020
Defendant's Main Brief Due	May 9, 2020
Plaintiff's Reply Brief Due	May 24, 2020

⁵ *See Sunkist Growers*, 229 USPQ at 149.

⁶ If a defendant's motion to extend its time to file an answer is granted, the order granting the motion will usually include a resetting of all subsequent deadlines or dates, including the discovery conference, disclosures, discovery and testimony periods. TBMP § 509.01(a).

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. 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). 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).

Information for Applicant as Pro Se (without an Attorney)

While Patent and Trademark Rule 11.14 permits a company to represent itself through a corporate officer authorized to represent the company, it is strongly advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Office cannot aid in the selection of an attorney. *See* TBMP § 114.02.

Trademark Rules 2.119(a) and (b) require that except for the notice of opposition or the petition to cancel, every submission filed in a proceeding before the Board ***must*** be served upon the other party or parties, and proper proof of such service must be made before the submission will be considered by the Board. Accordingly, all

submissions filed in this proceeding *must* be accompanied by a statement, signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was made, the name of each party or person upon whom service was made, and the email address or address. *See* TBMP § 113.03. Service must be made by email unless otherwise stipulated, or unless the filing party has satisfied the requirements for another method of service as set forth in Trademark Rule 2.119(b). The statement will be accepted as *prima facie* proof of service, must be signed and dated, and should take the form of a Certificate of Service as follows:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, address, and email address of opposing counsel or party).

Signature _____

Date _____

Submissions in Board proceedings must be made via ESTTA, the Electronic System for Trademark Trials and Appeals, and must be in compliance with Trademark Rules 2.126(a) and (b). *See* TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are at <http://estta.uspto.gov/>.

If Applicant does not retain counsel, it should become familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice (37 C.F.R. Part 2). Parties should also be familiar with the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”), available at <http://tbmp.uspto.gov/RDMS/TBMP/current>, the TTABVUE system for viewing the

record for all Board proceedings, available at <http://ttabvue.uspto.gov/ttabvue/>, and the Standard Protective Order, available at <https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0>. The Board's home page, available at <https://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board>, contains these and many other resources useful in Board proceedings. The Board's order instituting this proceeding also includes information with which Applicant should be familiar. Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006), *aff'd unpub'd*, 240 Fed. Appx.865 (Fed. Cir. 2007), *cert. denied*, 552 U.S. 1109 (2008).

This *inter partes* proceeding is similar to a civil action in a federal district court. The parties file pleadings and a range of possible motions. This proceeding includes designated times for disclosures, discovery (discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, to ascertain the facts underlying an adversary's case), a trial period, and the filing of briefs. Trademark Rules 2.122–2.125 govern the trial evidence and testimony. The Board does not preside at the taking of testimony; all testimony is taken out of the presence of the Board during the assigned testimony or trial periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. Additionally, the testimony of witnesses in *inter partes* cases may be submitted in the

form of an affidavit or a declaration pursuant to Trademark Rule 2.20 and in conformance with the Federal Rules of Evidence, filed during the proffering party's testimony period, subject to the right of any adverse party to elect to take and bear the expense of oral cross-examination of that witness. *See* Trademark Rule 2.123(a)(1). No paper, document, or exhibit will be considered as evidence unless it has been introduced in evidence in accordance with the applicable rules.