

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

EJW

January 24, 2020

Opposition No. 91243229

Luxottica Group S.P.A.

v.

Wayfarer Development Ltd.

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

In accordance the Board's scheduling order issued on December 3, 2019, the answer due date in this proceeding was reset to December 27, 2019. 33 TTABVUE. On December 23, 2019, Applicant submitted a consent motion to again extend the due date for its answer for thirty days until January 26, 2020. 34 TTABVUE. However, in the Board's order mailed September 27, 2019, the Board had required the parties to submit with any future motion to suspend or to extend the trial schedule a detailed report showing good cause to so suspend or extend the trial schedule, 27 TTABVUE 2, but Applicant's December 23, 2019 motion did not include the detailed report as required.¹ In view thereof, Applicant's December 23rd motion has not been and will not be granted.

¹ Once the Board requires the parties to submit a detailed report to show good cause for any additional suspension or extension of time for purposes of settlement, the consent motions to extend or to suspend generated by the Board's electronic filing system (ESTTA) should not

Nonetheless, the Board notes that Applicant has submitted an amended motion to extend its answer due date for sixty days to February 25, 2020. 35 TTABVUE 3. Initially, the Board construes the amended motion as a supplement to Applicant's December 23rd motion. In view thereof, because the December 23rd motion was filed prior to the reset deadline for filing an answer, the standard for review is whether Applicant has shown good cause for an additional extension of time, rather than excusable neglect. *See* Fed. R. Civ. P. 6(b); Trademark Rule 2.116(a).

The Board finds Applicant's explanation for its request for additional time is insufficient to extend the answer due date until February 25, 2020. Specifically, although Applicant has periodically checked with Opposer's counsel regarding the status of Opposer's consideration of Applicant's settlement proposal, it appears that Opposer has used the extensions as a means to delay the proceeding as there is no evidence of record showing that Opposer is actually reviewing Applicant's proposal, which was provided to Opposer well over a year ago (December 18, 2018). "Opposer brought this case and, in so doing, took responsibility for moving forward on the established schedule." *See Atlanta-Fulton County Zoo, Inc. v. DePalma*, 45 USPQ2d 1858, 1860 (TTAB 1998). Yet Opposer has barely moved forward at all.

In view of the foregoing, Applicant's amended motion to extend its answer due date is **granted** to the following extent, namely, Applicant is allowed until **FEBRUARY 7, 2020** to file an answer in this proceeding. Additionally, **no further consented extensions of time or suspensions of this proceeding for purposes**

be used. Rather, a motion that includes a detailed report should be uploaded through ESTTA. The ESTTA form cannot accommodate a lengthy statement of any kind.

of settlement will be allowed barring extraneous circumstances supported by declaration. Alternatively, the parties may contact the assigned Interlocutory Attorney,² to arrange a joint telephone conference with the Board to discuss the status of the parties' settlement discussions, if any, and request a suspension or extension of time during that conference. During any such conference, the parties would be required to provide the following information:³

1. The status of the parties' settlement negotiations, including when the last settlement proposal was sent, by whom, and when a response is expected;
2. A recitation of the issues that have been resolved since the commencement of this proceeding and a list of issues that remain to be resolved; and
3. A timetable for resolution.

See Trademark Rule 2.117(c) (Many consented or stipulated motions to suspend are suitable for automatic approval by ESTTA, but the Board retains discretion to condition approval on the party or parties providing necessary information about the status of settlement talks, ... as may be appropriate.); *see also* TBMP § 510.03(a).

Applicant is reminded that an answer must be filed through ESTTA, the Board's Electronic System for Trademark Trials and Appeals. *See* Trademark Rule 2.106(b)(1).

² Elizabeth Winter, elizabeth.winter@uspto.gov, 571-272-9240

³ Confidential information may be so designated and will be barred from public viewing.

Trial Dates Reset

Answer, conference, disclosures, discovery and trial dates are reset as follows:

Time to Answer	2/7/2020
Deadline for Discovery Conference	3/8/2020
Discovery Opens	3/8/2020
Initial Disclosures Due	4/7/2020
Expert Disclosures Due	8/5/2020
Discovery Closes	9/4/2020
Plaintiff's Pretrial Disclosures Due	10/19/2020
Plaintiff's 30-day Trial Period Ends	12/3/2020
Defendant's Pretrial Disclosures Due	12/18/2020
Defendant's 30-day Trial Period Ends	2/1/2021
Plaintiff's Rebuttal Disclosures Due	2/16/2021
Plaintiff's 15-day Rebuttal Period Ends	3/18/2021
Plaintiff's Opening Brief Due	5/17/2021
Defendant's Brief Due	6/16/2021
Plaintiff's Reply Brief Due	7/1/2021
Request for Oral Hearing (optional) Due	7/11/2021

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).

TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. **Note:** Parties are strongly encouraged to check the entire document before filing.⁴ The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the [ESTTA help](#) webpage.

⁴ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.