

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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February 3, 2021

Opposition No. 91253105
Opposition No. 91253653
Opposition No. 91254743
Opposition No. 91266658

Chubby Gorilla, Inc.

v.

Hills Point Industries, LLC

**M. Catherine Faint,
Interlocutory Attorney:**

This case now comes before the Board for consideration of Applicant's contested motion, filed November 2, 2020, to extend disclosure, discovery, and trial dates; and Opposer's consented motion, filed January 13, 2021, to suspend for settlement negotiations. In addition, it has come to the Board's attention that the parties are involved in a fourth opposition for the mark GORILLA GRIP, filed December 18, 2020.

I. Further Consolidation

The Board previously consolidated the first three Oppositions noted above. On December 18, 2020, Opposer filed a fourth opposition opposing Applicant's application Serial Nos. 88701306 and 8815304 for the marks GORILLA GRIP.

As all four proceedings involve the same parties, similar marks and common questions of law and fact, the Board finds that consolidation is appropriate.

The Board file will be maintained in Opposition No. 91253105 as the “parent” case. As a general rule, from this point on the parties should no longer file separate papers in connection with each proceeding, but file only a single copy of each paper in the parent case. Each paper filed should bear the numbers of all consolidated proceedings in ascending order. Because the involved proceedings, however, are consolidated prior to joinder of the issues in the fourth proceeding, Applicant must file **a separate answer for each opposition in the proceeding to which it pertains**, before commencing the practice of filing a single copy of any paper in the parent case.

Applicant’s answer to the notice of opposition in Opposition No. 91266658 is due **March 3, 2021** and should be filed in the proceeding to which it pertains.

Despite being consolidated, each proceeding retains its separate character and requires entry of a separate judgment. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings; a copy of the decision shall be placed in each proceeding file.

In keeping with Board practice, the Board adopts the closing date of the discovery period in the most recently instituted of the proceedings at issue for these consolidated proceedings as set out below. *See* TBMP § 511.

II. Motion to Extend

Applicant seeks to extend the discovery period arguing that, “due to the severity of the coronavirus cases throughout the country, personnel from Applicant are

decentralized and working from home making it difficult for Applicant's Attorney to reach such personnel and obtain the required responses to the discovery requests," and that neither party propounded discovery requests early in the discovery period.¹

Opposer argues Applicant has not shown good cause for an extension of discovery, but a "lack of diligence and inaction" in failing to timely serve its own discovery requests and should be denied.²

Because Applicant filed its motion to extend prior to the close of the discovery period, Applicant need only establish "good cause" for the requested extension. Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509.01 (2019). 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." *Am. Vitamin Prods., Inc. v. Dow Brands, Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992).

There is no evidence that Applicant has abused the privilege of extensions, as the record reflects that this is indeed Applicant's first extension request for this purpose a fourth notice of opposition has since been filed by Opposer, and the parties are involved in settlement negotiations. While Opposer seeks to paint Applicant as negligent, the Board does not characterize Applicant's actions, or failure to act, as bad faith.

¹ 12 TTABVUE 4.

² 13 TTABVUE 3.

Given the purpose presented in Applicant's motion, and in keeping with the Board's general practice, the Board finds good cause to extend discovery.

Accordingly, Applicant's motion is **granted**. Dates are reset as set out below.

III. Suspension for Settlement

Opposer's consented motion, filed January 13, 2021 to suspend this proceeding for 30 days for settlement discussions mirrors the one filed in Opposition No. 91266658 and is **granted**.

Accordingly, proceedings are suspended, subject to the right of either party to request resumption at any time.³ Trademark Rule 2.117(c).

In the event that there is no word from either party, proceedings shall resume on **February 13, 2021** without further notice or order from the Board, upon the schedule set out below.

IV. Schedule

As these proceedings are consolidated prior to answer in Opposition No. 91266658, but after the opening of discovery in the parent case, the Board expects the parties to have a brief discussion between counsel regarding any update for issues that are the subject of a discovery conference or initial disclosures by April 2, 2021. Dates are reset as follows:

Time to Answer in Opposition No. 91266658	3/3/2021
Discovery Opens	Open

³ The parties should note that if proceedings are suspended for a lengthy period of time pursuant to the filing of several motions to suspend for settlement, the Board retains discretion to condition the approval of any future consented or stipulated motion to suspend on a party or the parties providing necessary information about the status of settlement talks, discovery activities, or trial activities, as may be appropriate. See Trademark Rule 2.117(c).

Expert Disclosures Due	8/30/2021
Discovery Closes	9/29/2021
Plaintiff's Pretrial Disclosures Due	11/13/2021
Plaintiff's 30-day Trial Period Ends	12/28/2021
Defendant's Pretrial Disclosures Due	1/12/2022
Defendant's 30-day Trial Period Ends	2/26/2022
Plaintiff's Rebuttal Disclosures Due	3/13/2022
Plaintiff's 15-day Rebuttal Period Ends	4/12/2022
Plaintiff's Opening Brief Due	6/11/2022
Defendant's Brief Due	7/11/2022
Plaintiff's Reply Brief Due	7/26/2022
Request for Oral Hearing (optional) Due	8/5/2022

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. 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.