

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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JLE

April 1, 2022

Opposition No. 91254894 (parent)
Opposition No. 91256310

Ramen Hood, LLC

v.

Ramenhood LLC

Jennifer L. Elgin, Interlocutory Attorney:

This matter comes before the Board for consideration of Applicant's motion, filed March 28, 2022, to extend its trial period for an additional 30 days.¹ Opposer opposes the motion.² The Board, in its discretion, has elected to decide the motion without awaiting Applicant's reply brief.³

¹ 42 TTABVUE. Record citations are to TTABVUE, the Board's publicly available docket history system. *See, e.g., New Era Cap Co. v. Pro Era, LLC*, 2020 USPQ2d 10596, at *2 n.1 (TTAB 2020).

² 43 TTABVUE.

³ The consideration of reply briefs on motions is discretionary on the part of the Board. *See* Trademark Rule 2.127(a), 37 C.F.R. § 2.127(a). *See also No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1553 (TTAB 2000) (Rule 2.127 "vests the Board with discretion to consider a reply brief").

I. Background and Arguments of the Parties

This proceeding has been pending since March 26, 2020.⁴ The parties have agreed to numerous consented extensions of time. In October 2021, Opposer filed testimony and notices of reliance.⁵ Applicant noticed the oral cross examination of Opposer's witness in December 2021.⁶ Thereafter, the parties agreed to extend Applicant's trial period four times, in part because they were discussing settlement.⁷ Applicant has not yet filed evidence or testimony. As last reset, Applicant's trial period ended March 28, 2022;⁸ it filed the pending motion that day.

Applicant contends that good cause exists for an additional extension of its testimony period because the parties continue to discuss settlement, and Applicant's principal member (a small business owner also attending to the affairs of a recently deceased parent) has "diligently been working to prepare a counteroffer . . . [including] working out financing and speaking with venture capital and other investment professionals with restaurant industry experience in consideration of his business needs and objectives."⁹ Applicant asserts it has had multiple communications with its attorneys regarding structuring a settlement counteroffer, and requests the extension to focus on settlement rather than trial.¹⁰

⁴ See 1 TTABVUE.

⁵ See 28-32 TTABVUE.

⁶ 33 TTABVUE. It is not clear if the cross-examination took place.

⁷ See 34, 36, 38, 40 TTABVUE.

⁸ See 40 TTABVUE 3.

⁹ 42 TTABVUE 2.

¹⁰ *Id.* at 2-3.

In response, Opposer “declines to consent” to Applicant’s motion. Opposer contends: “Since the parties have been discussing settlement on and off for several years, the prospects for an amicable resolution of this proceeding are not great.”¹¹ Opposer points out that the statements of Applicant’s counsel are not supported by a declaration, but Opposer does not contest their veracity.¹² Opposer “requests that the Board approve no further extension requests by Applicant, and require Applicant to complete its testimony by the newly requested deadline of April 27, 2022.”¹³

II. Analysis and Decision

Applicant need only show “good cause” for the extension sought. *See* Fed. R. Civ. P. 6(b)(1)(A). *See also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 509.01 (June 2021). The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. *See, e.g., Am. Vitamin Prods., Inc. v. DowBrands Inc.*, 22 USPQ2d 1313 (TTAB 1992). However, a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party’s own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor. *See Nat’l Football League v. DNH Mgmt. LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008).

¹¹ 43 TTABVUE 2.

¹² *Id.* at 3.

¹³ *Id.*

The explanation provided by Applicant for the extension of its trial period is its focus on settlement discussions, complicated by the fact that it is a small business. It is well established that the existence of settlement negotiations alone does not justify a party's inaction or delay in proceeding with testimony. *Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479, 1480 (TTAB 2000). However, in this case, Applicant also explains that its principal member has been consumed with operating his business and dealing with personal issues. Moreover, Opposer does not challenge the complications experienced by Applicant in preparing for trial, negotiating a settlement, and operating its business. *Cf. Instruments SA Inc. V. ASI Instruments, Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999) (extension denied where plaintiff's claim of ongoing bilateral settlement negotiations was rebutted by defendant).

There is no showing that Applicant has acted negligently or in bad faith. Given that the previous extensions in the proceeding—though numerous—have been consented, Applicant has established good cause for the extension sought. In view thereof, Applicant's motion is **granted**, as modified below.

III. Dates Reset

Although the Board declines to foreclose the possibility of granting future extensions or suspensions, the parties are reminded that the Board's order dated February 28, 2022 imposed a condition to provide a detailed status report on the approval of **all** future motions to extend or suspend for settlement, including each of the items of information required therein.¹⁴ Failure to provide the required

¹⁴ See 39 TTABVUE 1-2.

information in connection with future motions to extend or suspend may result in denial of the motion and dates remaining as previously set. Moreover, the Board cautions that it is unlikely to approve future unconsented motions for extension or suspension absent a very strong showing of good cause.¹⁵

Proceeding dates are **reset** as follows:

Defendant's 30-day Trial Period Ends	4/27/2022
Plaintiff's Rebuttal Disclosures Due	5/12/2022
Plaintiff's 15-day Rebuttal Period Ends	6/11/2022
Plaintiff's Opening Brief Due	8/10/2022
Defendant's Brief Due	9/9/2022
Plaintiff's Reply Brief Due	9/24/2022
Request for Oral Hearing (optional) Due	10/4/2022

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, matters in evidence, the manner and timing of taking testimony, 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

¹⁵ See *Fairline Boats*, 59 USPQ2d at 1480 (settlement discussions alone insufficient for good cause standard). Accordingly, although the Board has granted Applicant's motion to extend in this instance, the parties should **simultaneously** advance any settlement discussions and file their evidence and testimony, and not rely on the possibility of future extensions.

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final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).