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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91266802
Party	Defendant Sezzle Inc.
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Submission	Motion to Extend
Filer's Name	Todd R. Fronek
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Signature	/Todd R. Fronek/
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Attachments	Motion to Extend.pdf(130599 bytes) 2021-12-06 Fronek Declaration in Support of Motion to Extend.pdf(108880 bytes)

**Neral IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ITS, Inc.,

Opposer,

v.

Sezzle, Inc.,

Applicant.

Opposition No. 91266802

Serial No. 88891706

APPLICANT'S MOTION TO EXTEND

Applicant Sezzle, Inc. (“Sezzle” or “Applicant”) hereby moves for a forty-five (45) day extension of the current discovery and trial dates. Sezzle submits that there is good cause for a bilateral extension of time because the parties are working together to complete remaining outstanding discovery items in this proceeding, and the parties are shortly set to engage in additional direct settlement negotiations. Sezzle apologizes for requiring the Board to become involved in what should be a straight-forward request for a bilateral extension of fact discovery, but Opposer ITS, Inc. (“ITS” or “Opposer”) has refused to consent to this modest extension, instead stating that they would only agree to a 45-day suspension and unilateral extension of discovery for ITS.

Pursuant to Fed. R. Civ. P. 6(b), deadlines may be extended on motion for good cause, provided the motion is made before the original time or its extension expires. Pursuant to 37 C.F.R. § 2.120(a), limited extensions of the discovery period may be granted by the board upon motion, provided the extension is not necessitated by a lack of diligence or unreasonable delay.

The current discovery deadline is set to close on December 6, 2021. (Doc. 7, p. 1). There is good cause for a forty-five (45) day extension of the current discovery and trial dates for several reasons.

First, throughout this proceeding the parties have periodically discussed the potential for settlement. Those informal discussions have taken place on an ongoing basis since July 2021. *See* Declaration of Todd R. Fronck in Support of Applicant’s Motion to Extend (“Fronck Dec. 6 Decl.”), ¶ 2. In late November 2021, the parties agreed to participate in an in-person settlement meeting involving the parties’ representative and their counsel. *See id.* This settlement meeting was originally planned for December 2, 2021 but has since been postponed to December 13, 2021 to accommodate a scheduling conflict. *See id.*

Second, the parties are in the process of completing additional discovery obligations. Opposer ITS has, within the last week, produced additional documents that were originally requested by Sezzle on September 17, 2021. *See id.*, ¶ 3. During the several weeks leading up to the close of fact discovery, Sezzle’s litigation counsel, John Kvinge and Christopher Young, were busy addressing a crush of litigation deadlines in other matters. *See id.*, ¶ 4. I understand that between late October 2021 and December 6, 2021, Mr. Kvinge has been involved in preparing for a dispositive motion hearing, an oral argument before the Minnesota Court of Appeals, and taking multiple depositions. *See id.* Mr. Young has been similarly occupied with preparing a complex motion for a Temporary Restraining Order (including both opening and reply memoranda), preparing a motion to dismiss a class action complaint, preparing voluminous dispositive motion briefing (including both opening and reply memoranda), and responding to a motion for claim and delivery (injunctive relief) pursuant to Minnesota statutes. *See id.* In addition to addressing each of these important deadlines, some of which related to “bet-the-

company” litigation matters on behalf of other clients, Sezzle’s litigation counsel also prepared and served Sezzle’s responses to ITS’ written discovery requests. *See id.* The Board has previously found that “the press of litigation may indeed constitute good cause for an extension of time.” *Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletudacale SCRL*, No. 115956, 2001 WL 609673 at *1 (T.T.A.B. May 2, 2001); *see also Kelima K LLC v. Wardrobe Therapy, LLC*, No. 91217702, 2015 WL 9906652 at *2 (T.T.A.B. Nov. 30, 2015) (finding that a combination of counsel’s two week vacation, an overseas trip to take a deposition for another case, and a pre-paid trip to take daughters to college demonstrated sufficient good cause to justify extension of time). Given the degree to which Messrs. Kvinge and Young were required to address substantial litigation requirements in other matters, good cause exists for a short extension here.

While all of this was going on, Sezzle also was working to complete its document production and produce a witness for a 30(b)(6) deposition. On December 3, 2021, Sezzle served a notice of 30(b)(6) deposition of ITS for December 6, 2021¹, which ITS has objected to on ground of insufficient notice. *See Fronek Dec. 6 Decl.*, ¶ 5. Notwithstanding ITS’ objection, a 45-day extension of the discovery deadline will allow for all of these outstanding tasks to be completed in an orderly and efficient fashion. Indeed, if the settlement discussions currently scheduled for December 13 are not initially fruitful, bilateral depositions may allow the parties to flesh out their understanding of the facts in a way that will have material impact on their settlement positions, potentially making settlement more likely. Thus, the modest 45-day

¹ Sezzle has offered to reschedule the deposition for a mutually convenient date if the discovery period is extended.

bilateral extension of fact discovery will, at least potentially, positively impact the potential for settlement.

Third, the parties, and particularly Sezzle, have not abused the privileged of requesting extensions of the proceeding's deadlines. *See id.*, ¶6. Sezzle requested and obtained a 30-day extension of time in February 2021 with the consent of ITS. *See id.* ITS requested and obtained a 60-day suspension in May 2021 with the consent of Sezzle. *See id.* Only ITS has been unwilling to grant a reasonable extension in this case and in doing so it makes no suggestion that such an extension would prejudice it in any way.

For the foregoing reasons, Sezzle respectfully requests a 45-day extension of the discovery and trial period in this proceeding, resulting in the following deadlines:

Time to Answer	03/10/2021 (CLOSED)
Deadline for Discovery Conference	04/09/2021 (CLOSED)
Discovery Opens	04/09/2021 (CLOSED)
Initial Disclosures Due	07/09/2021 (CLOSED)
Expert Disclosures Due	11/06/2021 (CLOSED)
Discovery Closes	01/20/2022
Plaintiff's Pretrial Disclosures Due	03/06/2022
Plaintiff's 30-day Trial Period Ends	04/20/2022
Defendant's Pretrial Disclosures Due	05/05/2022
Defendant's 30-day Trial Period Ends	06/19/2022

Plaintiff's Rebuttal Disclosures Due	07/04/2022
Plaintiff's 15-day Rebuttal Period Ends	08/03/2022
Plaintiff's Opening Brief Due	10/02/2022
Defendant's Brief Due	11/01/2022
Plaintiff's Reply Brief Due	11/16/2022
Request for Oral Hearing (optional) Due	11/26/2022

Dated: December 6, 2021

Attorneys for Sezzle Inc.

/John A. Kvinge/

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Attorneys for Sezzle Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2021, I caused a true and correct copy of the foregoing Applicant's Motion to Extend in Word and PDF format, to be served by email upon the following attorneys of record for Opposer:

Clinton Newton, CNEWTON@shb.com, CGNTMDocket@shb.com.

/John A. Kvinge/
John A. Kvinge
Attorney for Sezzle Inc.

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ITS, Inc.,

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Serial No. 88891706

**DECLARATION OF TODD R. FRONEK IN SUPPORT OF APPLICANT'S MOTION
TO EXTEND**

I, Todd R. Fronek, declare as follows:

1. I am an attorney at Larkin Hoffman Daly & Lindgren, and I represent Applicant Sezzle, Inc. ("Sezzle") in the above-captioned action. The statements made herein are made of my own personal knowledge.

2. The Notice of Opposition was filed on December 30, 2020. Since commencement of this Opposition, the parties have periodically discussed settlement on an ongoing basis. The parties have been involved in ongoing settlement discussions since July 2021. In late November 2021, the parties agreed to a meeting between counsel and business representatives to meet in person on December 2, 2021 to discuss settlement. Due to a scheduling conflict that meeting was postponed. The parties have now agreed to conduct a meeting between counsel and business representatives on December 13, 2021.

3. The parties continue to complete their discovery obligations in this matter. Within the last week ITS has produce additional documents that were requested by Sezzle on

September 17, 2021. On November 22, 2021, Sezzle responded to voluminous written discovery requests (including interrogatories, requests for production, and requests for admission) from ITS. Sezzle is currently preparing its document production and is working to prepare a witness for a Rule 30(b)(6) deposition first requested by ITS on November 17, 2021. On December 3, 2021, less than three weeks after receiving a Rule 30(b)(6) deposition notice from ITS, Sezzle served a Notice of Rule 30(b)(6) deposition of ITS for December 6, 2021. Attached hereto as Exhibit A is a true and correct copy of Sezzle's Notice of Rule 30(b)(6) deposition to ITS. Sezzle has offered to reschedule the deposition for a mutually convenient date if the discovery period is extended.

4. During the several weeks leading up to the close of fact discovery both of Sezzle's TTAB litigation counsel, John Kvinge and Christopher Young, were faced with a crush of litigation deadlines in other matters. For example, I understand that from late October to now, Mr. Kvinge was deeply involved in preparing for a dispositive motion hearing, an oral argument before the Minnesota Court of Appeals, and taking multiple depositions. I also understand that Mr. Young was similarly occupied with preparing a complex motion for a Temporary Restraining Order (including both opening and reply memoranda), preparing a motion to dismiss a class action complaint, preparing voluminous dispositive motion briefing (including both opening and reply memoranda), and responding to a motion for claim and delivery (injunctive relief) pursuant to Minnesota statutes. In addition to addressing each of these important deadlines, some of which I understand related to "bet-the-company" litigation matters on behalf of other clients, Sezzle's litigation counsel also prepared and served Sezzle's responses to ITS' written discovery requests.

5. As part of the parties' discussions relating to fact discovery and settlement efforts, Sezzle has proposed that the parties agree to extend the fact discovery period by 45 days. Such an extension will allow both parties to obtain the discovery they deem necessary to determine the merits of their respective claims and defenses. Unfortunately, ITS has refused to agree to a mutual 45-day extension of fact discovery and has instead insisted that any extension be unilateral, solely for ITS' benefit.

6. Up to this point, the parties have worked cooperatively to accommodate each other's requests relating to scheduling and in doing so have not abused the privilege of requesting extensions of deadlines in this proceeding. In February 2021, Sezzle requested and ITS agreed to a 30-day extension of deadlines. In May 2021, ITS requested, and Sezzle agreed to a 60-day suspension. Thus, the 45-day extension requested by Sezzle is consistent with the parties' previous history of accommodating reasonable requests, is not prejudicial, and will allow both parties to complete their limited remaining fact discovery, consisting primarily of one Rule 30(b)(6) deposition per party.

I declare the foregoing is true and correct under penalty of perjury.

December 6, 2021

/s/ Todd R. Fronek
Todd R. Fronek