UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Desjardins/EJW

September 28, 2021

Opposition No. 91267937

Alpha Kappa Alpha Sorority

v.

Stroll to the Polls, Inc.

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

This case now comes up for consideration of Applicant's motion (filed September 3, 2021) to extend the time to file its answer by thirty days. 11 TTABVUE.[1] Opposer opposes the motion. 12 TTABVUE. In view of the circumstances described in the motion, the Board exercises its discretion to consider the motion prior to the due date for Applicant to file its reply brief.

I. Parties' Arguments

As last reset in the Board's order mailed on July 16, 2021, 8 TTABVUE 17, the due date for Applicant's answer was September 3, 2021. 8 TTABVUE 17. Applicant

[1] Citations to the record or briefs in this order include citations to the publicly available documents on TTABVUE, the Board's electronic docketing system. *See, e.g., Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). The number preceding "TTABVUE" corresponds to the docket entry number; the number(s) following "TTABVUE" refer to the page number(s) of that particular docket entry. All citations to documents contained in the TTABVUE database are to the downloadable .pdf versions of the documents in the USPTO TTABVUE Case Viewer.

requests that the Board allow it an additional thirty (30) days in which to file its answer because the parties are actively engaged in "global" settlement negotiations. 11 TTABVUE 3-4. Opposer opposes the motion to extend, arguing that Applicant is engaging in "procedural gamesmanship," that Applicant's counsel is "disingenuously misrepresenting" the communications between counsel, and that the parties are "very far apart in terms of settlement."[2] 12 TTABVUE 2-3. Opposer indicates its counsel consistently declined Applicant's requests for consent to extend time to file an answer and directed Applicant's counsel to file an answer at the same time that the parties were engaged in settlement discussions. 12 TTABVUE 4, 6, 8.

II. Legal Standard

The appropriate standard for allowing an extension of a prescribed period prior to the expiration of the term is "good cause." *See* Fed. R. Civ. P. 6(b); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 509 (2021) and cases cited therein. The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the motion sets forth with particularity facts that constitute good cause for the requested extension, *Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479, 1480 (TTAB 2000), and the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. *See, e.g., SFW Licensing Corp. v. Di Pardo Packing Ltd.*, 60 USPQ2d 1372, 1375 (TTAB 2001) (cursory and unsupported statements are insufficient to show good cause); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1851

[2] In support of its opposition, Opposer submitted copies of emailed communications between the parties' counsel. 12 TTABVUE 5.

(TTAB 2000); *American Vitamin Products, Inc. v. DowBrands Inc.*, 22 USPQ2d 1316 (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 Nat'l Football League v. DNH Management LLC,* 85 USPQ2d 1852, 1854 (TTAB 2008) (citing *Sunkist Growers, Inc. v. Benjamin Ansehl Company,* 229 USPQ 147 (TTAB 1985)).

III. Board's Analysis and Order

Initially, the Board recognizes that the subject motion is Applicant's first request for an extension of any deadline in this proceeding, and there is no evidence in the record showing that Applicant is guilty of negligence or bad faith in requesting the extension of time. Nonetheless, the Board finds that Applicant has not made the minimum showing necessary to establish good cause to support an extension of the time to file an answer for a period of thirty days.

In particular, the record shows the parties have engaged in settlement negotiations, and that the negotiations involve matters beyond the instant proceeding. 11 TTABVUE 2-3; 12 TTABVUE 3, 5-9. However, Applicant's motion does not articulate with particularlity what good cause exists to extend the time to answer in that the existence of settlement negotiations alone does not constitute good cause for an extension of time. *See e.g.*, *Fairline Boats*, 59 USPQ2d at 1480 (mere existence of settlement negotiations or proposals, without more, would not justify delay in proceeding with testimony). Further, a party is under no requirement to settle a case and is under no requirement to negotiate settlement with its adversary. *Kellogg Co.*

v. New Generation Foods Inc., 6 USPQ2d 2045, 2049 (TTAB 1988). In view thereof, Applicant's clearly one-sided desire to keep the proceeding from moving forward in view of the possibility of reaching a settlement with Opposer does not warrant an extension of time to file an answer.

Accordingly, Applicant's motion to extend the time to answer and reset trial dates is **DENIED** and this proceeding shall continue apace on a slightly modified trial schedule. Applicant is **ORDERED** to submit its answer no later than **OCTOBER 5, 2021**, failing which a notice of default will be issued. *See* Fed. R. Civ. P. 55(a), Trademark Rule 2.116(a).

IV.Proceeding Resumed; Trial Dates Reset

Trial dates are modified as shown in the following schedule:

Time to Answer	**10/5/2021**
Deadline for Discovery Conference	**10/12/2021**
Discovery Opens	**10/12/2021**
Initial Disclosures Due	**11/11/2021**
Expert Disclosures Due	**3/11/2022**
Discovery Closes	**4/10/2022**
Plaintiff's Pretrial Disclosures Due	**5/25/2022**
Plaintiff's 30-day Trial Period Ends	**7/9/2022**
Defendant's Pretrial Disclosures Due	**7/24/2022**
Defendant's 30-day Trial Period Ends	**9/7/2022**
Plaintiff's Rebuttal Disclosures Due	**9/22/2022**
Plaintiff's 15-day Rebuttal Period Ends	**10/22/2022**

Plaintiff's Opening Brief Due	**12/21/2022**
Defendant's Brief Due	**1/20/2023**
Plaintiff's Reply Brief Due	**2/4/2023**
Request for Oral Hearing (optional) Due	**2/14/2023**

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, 37 C.F.R. §§ 2.121-2.125. 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), 37 C.F.R. §§ 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), 37 C.F.R. § 2.129(a).