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

Proceeding no.	91267937
Party	Defendant Stroll to the Polls, Inc.
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Date	06/13/2024
Attachments	Motion for Extension of Testimony Period and Examination - 2024-06-13 .pdf(185052 bytes) AKA v STTP - Notice of Deposition - Priestley Johnson - 2024-06-07.pd f(98158 bytes) AKA v STTP - Notice of Deposition - Erin Sylvester Philpot - 2024-06-07.pdf(95927 bytes) AKA v STTP - Notice of Deposition - Dorcas E. Washington - 2024-06-07 .pdf(97904 bytes)

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

Alpha Kappa Alpha Sorority Opposer, v. Stroll to the Polls, Inc. Applicant.	Opposition No. 91267937 Mark: STROLL TO THE POLLS Serial No. 90012428 Filed: June 20, 2020 Published: Nov. 03, 2020

MOTION FOR 30-DAY EXTENSION OF TIME APPLICANT'S TRIAL PERIOD AND FOR EXAMINATION OF OPPOSER'S TRIAL WITNESSES

Applicant Stroll to the Polls, Inc. ("**Applicant**"), files this motion to extend the time to conduct the examination of the trial witnesses of Opposer Alpha Kappa Alpha Sorority ("**Opposer**"), pursuant to 37 CFR § 2.123(c) and TMBP 703.01, and otherwise in furtherance of completing Applicant's own trial testimony. Additionally, Applicant is seeking to extend the deadline for Applicant's trial period, pursuant to 37 CFR § 2.121(c), Fed Rules Civ Proc R 6(b), and TBMP 509.01. Opposer has refused to consent to such extension requests.

I. BACKGROUND

By order dated January 31, 2024, the Trademark Trial and Appeal Board (the "**TTAB**") set the due date for Applicant's Pretrial Trial Disclosures for April 30, 2024 and Applicant's 30-day trial period to end on June 14, 2024. Applicant notes that on April 15, 2024, Opposer filed and served upon Applicant the testimony declarations of Dorcas E. Washington ("**Washington**"), Dr. Erin Sylvester Philpot ("**Philpot**"), and Priestley Johnson ("**Johnson**", together with

Washington and Philpot, "**Opposer's Trial Witnesses**") with associated exhibits. Applicant has elected to pursue the oral cross-examination of Opposer's Trial Witnesses, in accordance with 37 CFR § 2.123(c), noting that Applicant had also indicted - in its Pretrial Disclosure - that it might elect to obtain testimony, possibly during its trial period, (1) from "[a]ny and all witnesses identified by Opposer," (2) from "[a]ny and all witnesses called by Opposer", and (3) for "[a]ny impeachment and rebuttal witnesses as necessary". (see TTAB Docket No.: 78, referenced in TTAB Docket No.: 80).

On June 5, 2024, Applicant's counsel contacted Opposer's counsel via email informing same of Applicant's intent to conduct oral cross-examination and otherwise take testimony of Opposer's Trial Witnesses and seeking (1) consent and/or stipulation to an extension of time to conduct oral cross-examination of Opposer's Trial Witnesses and (2) consent to conduct such depositions by virtual teleconference. Opposer's counsel refused to consent to any associated extension of time but did consent to the conducting of the aforementioned depositions via virtual teleconference (i.e., Zoom or other videoconference technology).

Applicant filed via ESTTA and served a notice of election of oral cross-examination of Opposer's Trial Witnesses on June 7, 2024. Additionally, on June 7, 2024, Applicant served notices of deposition for each of Opposer's Trial Witnesses to Opposer's counsel and to such witnesses and/or the authorized representative thereof, with the depositions to be taken via virtual teleconference on June 13, 2024 (within the pre-established trial period for Applicant). A copy of each notice is attached hereto as part of Exhibit 1.

On June 10, 2024, Applicant's counsel and Opposer's counsel held a brief phone call to discuss logistics surrounding the proposed depositions and the availability of Opposer's

witnesses.[1] On the same date, Applicant's counsel was informed by the representative of witness Washington that Washington was not available to be deposed on the proposed date but that she would be willing to appear for a deposition at a later date and time to be agreed upon by the parties (proposing later either June 25, 2024 or June 26, 2024).[2]

Additionally, on the same date, Applicant's counsel contacted the representative of Philpot to confirm the availability of Philpot for the proposed deposition date. On June 11, 2024, the representative of Philpot informed Applicant's counsel that Philpot was unavailable for the proposed deposition date but did agree to Philpot being deposed at a later date and provided alternate dates of availability (proposing later June 17, 18, 25 or 26, 2024).

Lastly, on June 10, 2034, Applicant's counsel attempted to contact Johnson via email to confirm receipt of the notice of deposition and to confirm her availability for the proposed deposition.[3] Applicant's counsel received an automated error message that indicated that the email was undeliverable and that the email address for Johnson was no longer operational. On June 11, 2024, Applicant's counsel contacted Opposer's counsel regarding contact information for Johnson and was informed that it appeared to Opposer's counsel that Johnson was no longer employed by the company associated with email address that was provided. Further, Opposer's counsel indicated that they attempted to contact Ms. Johnson via LinkedIn for updated contact information but had not yet received a response. As a result, Applicant's counsel was unable to confirm

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1 During the phone call, Opposer's counsel indicated that she would be available for the proposed deposition day on June 13, 2024 but expressed concern regarding the availability of the witnesses.

2 Opposer's counsel indicated in a subsequent email that she preferred June 26, 2024. The representative of Washington reconfirmed tonight (June 13, 2024) at or about 9.45p ET that Washington was still available and they would " continue to stand-by for confirmation of a new date for [Washington's] oral cross examination."

3 Applicant's counsel attempted to contact Johnson via the email address that was provided by Opposer.

Johnson's receipt of the notice of deposition and her availability for the proposed deposition at the time of the filing of this motion or future availability.

On June 12, 2024, in light of the aforementioned unavailability of Opposer's Trial Witnesses for the proposed deposition date, Applicant's counsel contacted Opposer's counsel via email to ascertain if Opposer would consent to an extension of the time in which Applicant could conduct oral cross-examination of the aforementioned witnesses. Opposer's counsel informed Applicant's counsel that Opposer would not.

II. DISCUSSION

"The Board is generally liberal in granting extensions of time so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused." ***Champagne Louis Roederer v. J. Garcia Carrion, S.A.***, No. Opp. No. 91155105, 2004 WL 839411, at *5 (TTAB 2004); ***Am. Vitamin Prod. Inc. v. Dowbrands Inc.***, Can. No. 19036, 1992 WL 88051, at *3 (TTAB 1992). Applicant "need only show good cause for the requested extension." TBMP § 509.01. Applicant asserts that an extension is warranted to ensure that Applicant can exercise its right to oral cross-examination of Opposer's trial witnesses and Opposer will not be prejudiced by such extension considering the witnesses are amenable to conducting the depositions in the coming weeks.

Applicant seeks to exercise its right to conduct examination of Opposer's Trial Witnesses pursuant to 37 CFR 37 CFR § 2.123(a)(1) and (c), which states:

> 37 CFR 37 CFR § 2.123(a)(1) - The testimony of witnesses in inter partes cases may be submitted in the form of an affidavit or a declaration pursuant to § 2.20 and in conformance with the Federal Rules of Evidence, filed during the proffering party's testimony period, subject to the right of any adverse party to elect to take and bear the expense of oral cross-examination of that witness as provided under paragraph (c) of this section if such witness is within the jurisdiction of the United

States, or conduct cross-examination by written questions as provided in § 2.124 if such witness is outside the jurisdiction of the United States, and the offering party must make that witness available; or taken by deposition upon oral examination as provided by this section; or by deposition upon written questions as provided by § 2.124.

37 CFR 37 CFR § 2.123(c) - Notice of examination of witnesses. Before the oral depositions of witnesses shall be taken by a party, due notice in writing shall be given to the adverse party or parties, as provided in § 2.119(b), of the time when and place where the depositions will be taken, of the cause or matter in which they are to be used, and the name and address of each witness to be examined. Depositions may be noticed for any reasonable time and place in the United States. A deposition may not be noticed for a place in a foreign country except as provided in paragraph (a)(2) of this section. No party shall take depositions in more than one place at the same time, nor so nearly at the same time that reasonable opportunity for travel from one place of examination to the other is not available. When a party elects to take oral cross-examination of an affiant or declarant, the notice of such election must be served on the adverse party and a copy filed with the Board within 20 days from the date of service of the affidavit or declaration and completed within 30 days from the date of service of the notice of election. **Upon motion for good cause by any party, or upon its own initiative, the Board may extend the periods for electing and taking oral cross-examination.** When such election has been made but cannot be completed within that testimony period, the Board, after the close of that testimony period, shall suspend or reschedule other proceedings in the matter to allow for the orderly completion of the oral cross-examination(s). (emphasis added)

Here, Applicant has notified Opposer of its intention to exercise its right to examination of Opposer's Trial Witnesses and it is Opposer's duty to make the witnesses available. Applicant concedes that the notice of election of cross-examination was not served within twenty (20) days following service of the declarations but Applicant did notice Opposing counsel of such election prior to the end of Applicant's trial period and provided notices of deposition which would have provided for deposing of Opposer's Trial Witnesses within Applicant's proscribed 30-day of such trial period.

Applicant served notices of deposition on Opposer and Opposer's Trial Witnesses, which provided reasonable notice for the witnesses to appear. See, for example, ***Sunrider Corp. v. Raats***,

83 USPQ2d 1648, 1653 (TTAB 2007) (six calendar days is reasonable notice); ***Duke University v. Haggar Clothing Co.***, 54 USPQ2d 1443, 1444 (TTAB 2000) (one and two-day notices were not reasonable without compelling need for such haste; three-day notice was reasonable); ***Hamilton Burr Publishing Co. v. E. W. Communications, Inc.***, 216 USPQ 802, 804 n.6 (TTAB 1982) (two-day notice of deposition, although short, was not unreasonable where deposition was held a short distance from applicant's attorney's office and where no specific prejudice was shown).

Applicant's counsel also notes that unfortunately its two-person firm was involved in two federal district court cases during the twenty (20) day period in question.[4] Accordingly, Applicant's counsel submits that the delay in noticing the witnesses was for good cause. ***Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL***, 59 USPQ2d 1383, 1383-84 (TTAB 2001) (the press of other litigation may constitute good cause to extend but alleged deficiencies in discovery responses not good cause to extend discovery where timely motion to compel was not filed). In addition, the authorized representative of Applicant was engaged in work activity that called for her to travel and otherwise be unavailable for consultation regarding this matter.

III. CONCLUSION

Mindful of all of the foregoing (most notably the unavailability of the witnesses during Applicant's trial period), Applicant submits that good cause exists for the requested short extension of time. As indicated, Applicant notified Opposer's Trial Witnesses and Opposer of its intent to conduct oral cross-examination and otherwise obtain the trial testimony of such witnesses.

[4] One District Court case called for the firm to prepare for and participate in a Court scheduled hearing (May 13, 2024) regarding motions to dismiss and lis pendens determinations and the other District Court case called for the firm to prepare for and participate in a court ordered mediation (May 28, 2024).

Additionally, Applicant sent notices of deposition to Opposer and the witnesses and/or their respective representatives, which provided reasonable notice of the desired deposition date and times.

The parties agreed to the form of the depositions being conducted by virtual teleconference in order to provide convenience for all parties involved. Opposer's Trial Witnesses were unavailable for the desired deposition date and Applicant engaged in discussions with such witnesses to conduct such depositions at a later date (with the exception of Ms. Johnson who was unable to be contacted due to insufficient contact information). **The representatives of two of Opposer's Trial Witnesses have already provided availability dates during this calendar month.** Opposer has refused to consent to an extension of Applicant's testimony period or the time to take oral cross-examination of Opposer's witnesses despite such witnesses' willingness to cooperate with rescheduling such depositions. Applicant also notes that the extension is being requested prior to the expiration of the now-established deadline for Applicant's trial period.

The Board is within its discretion to extend Applicant's testimony period pursuant to 37 CFR § 2.121(c).

Respectfully submitted,

Dated: June 13, 2024

By: /s/ Willard A. Stanback

Willard A. Stanback, Esq.
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E-mail: willardalonzo@stanback-pc.com
Attorney for Applicant,
Stroll to the Polls, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached MOTION FOR 30-DAY EXTENSION OF TIME APPLICANT'S TRIAL PERIOD AND FOR EXAMINATION OF OPPOSER'S TRIAL WITNESSES was served on the Attorney for the Opposer on the date listed below via email:

JESSICA A. EKHOFF
Pattishall Mcauliff Newbury Hilliard & Geraldson LLP
200 South Wacker Drive Suite 2900
Chicago, IL 60606
jae@pattishall.com
fgt@pattishall.com
pam@pattishall.com

Dated: June 13, 2024

By: /s/ Willard A. Stanback
Willard A. Stanback, Esq.

EXHIBIT 1

DEPOSITION NOTICES

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

Alpha Kappa Alpha Sorority Opposer, v. Stroll to the Polls, Inc. Applicant.	Opposition No. 91267937 Mark: STROLL TO THE POLLS Serial No. 90012428 Filed: June 20, 2020 Published: Nov. 03, 2020

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, pursuant to 37 CFR § 2.123(c), TMBP 703.01, and the Federal Rules of Civil Procedure, Applicant Stroll to the Polls, Inc. will take the deposition upon oral cross-examination of **PRIESTLEY JOHNSON**, commencing at 3:00pm on Thursday, June 13, 2024 (or such other date and time as agreed upon based upon the availability of Ms. Johnson), at 36 W Lafayette St., Suite 103, Trenton, NJ 08608, via Virtual Zoom or other videoconference technology before a notary public or other officer authorized to administer oaths.

The deposition will be recorded by stenographic and audiovisual means.

Dated: June 7, 2024

/ Willard A Stanback /

Willard A. Stanback
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Telephone: 855-614-1111
Facsimile: 609-751-5121
willardalonzo@stanback-pc.com
Attorneys for Applicant Stroll to the Polls, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached Notice of Deposition for Priestley Johnson was served on Priestley Johnson on the date listed below via email:

PRIESTLEY JOHNSON
Civic Nation
P.O. Box 34673
1400 L Street NW
Washington, D.C. 20005
priestley@civicnation.org

With a copy to:

JESSICA A. EKHOFF
Pattishall Mcauliff Newbury Hilliard & Geraldson LLP
200 South Wacker Drive Suite 2900
Chicago, IL 60606
jae@pattishall.com
fgt@pattishall.com
pam@pattishall.com

June 7, 2024

By: / willard a stanback /
Willard A. Stanback, Esq.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, pursuant to 37 CFR § 2.123(c), TMBP 703.01, and the Federal Rules of Civil Procedure, Applicant Stroll to the Polls, Inc. will take the deposition upon oral cross-examination of **ERIN SYLVESTER PHILPOT**, commencing at 12:00pm on Thursday, June 13, 2024 (or such other date and time as agreed upon based upon the availability of Ms. Philpot), at 36 W Lafayette St., Suite 103, Trenton, NJ 08608, via Virtual Zoom or other videoconference technology before a notary public or other officer authorized to administer oaths.

The deposition will be recorded by stenographic and audiovisual means.

Dated: June 7, 2024

/ willard a stanback /

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Attorneys for Applicant Stroll to the Polls, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached Notice of Deposition for Erin Sylvester Philpot was served on the General Counsel for Florida State University on the date listed below via email:

CAROLYN A. EGAN
Vice President for Legal Affairs and General Counsel
Office of the General Counsel
Florida State University
222 South Copeland Street, Suite 424
Westcott Building, Tallahassee, FL 32306-1400
cegan@fsu.edu

With a copy to:

JESSICA A. EKHOFF
Pattishall Mcauliff Newbury Hilliard & Geraldson LLP
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fgt@pattishall.com
pam@pattishall.com

June 7, 2024

By: / willard a stanback /
Willard A. Stanback, Esq.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, pursuant to 37 CFR § 2.123(c), TMBP 703.01, and the Federal Rules of Civil Procedure, Applicant Stroll to the Polls, Inc. will take the deposition upon oral cross-examination of **DORCAS E. WASHINGTON**, commencing at 9:00am on Thursday, June 13, 2024 (or such other date and time as agreed upon based upon the availability of Ms. Washington), at 36 W Lafayette St., Suite 103, Trenton, NJ 08608, via Virtual Zoom or other videoconference technology before a notary public or other officer authorized to administer oaths.

The deposition will be recorded by stenographic and audiovisual means.

Dated: June 7, 2024

/ willard Alonzo stanback /

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Attorneys for Applicant Stroll to the Polls, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached Notice of Deposition for Dorcas E. Washington was served on the General Counsel for Delta Sigma Theta Sorority, Incorporated on the date listed below via email:

TAMEKA SIMMONS
General Counsel and Chief Compliance Officer
Delta Sigma Theta Sorority, Incorporated
1707 New Hampshire Ave. NW
Washington, D.C. 20009
202-986-2400
TSimmons@deltasigmatheta.org

With a copy to:

JESSICA A. EKHOFF
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200 South Wacker Drive Suite 2900
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pam@pattishall.com

June 7, 2024

By: / willard a stanback /
Willard A. Stanback, Esq.