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

Proceeding no.	91273283
Party	Plaintiff AOB Products Company
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Date	09/19/2023
Attachments	2023.09.19 AOB Motion to Extend Time to Respond to Discovery Requests and All Subsequent Deadlines.pdf(142972 bytes )

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

In the Matter of Application Serial No. 90/075,528

For the mark: **BUBBA BURGER**

Published: June 8, 2021

AOB Products Company,

*Opposer,*

v.

Bubba Foods, LLC,

*Applicant.*

Opposition No. 91273283

**OPPOSER’S MOTION TO EXTEND TIME TO RESPOND TO DISCOVERY  
REQUESTS AND ALL SUBSEQUENT DEADLINES BY FOURTEEN DAYS**

Opposer AOB Products Company (“Opposer”) respectfully submits this motion to extend its deadline to respond to discovery requests served by Bubba Foods, LLC (“Applicant”), and all subsequent deadlines in the above-captioned proceeding, for a period of fourteen (14) days. The parties have been negotiating settlement for several months and routinely agreeing to each other’s extension requests. Without warning, Applicant refused to agree to Opposer’s most recent request, despite ongoing settlement negotiations. Accordingly, Opposer is bringing this motion for a short extension of time.

**BACKGROUND**

On December 6, 2021, Opposer filed a Notice of Opposition (the “Opposition”), opposing Application Serial No. 90/075,528 for the mark BUBBA BURGER in International Class 25. 1 TTABVUE. Since then, Opposer and Applicant have engaged in continuous settlement discussions. The parties have agreed to numerous extensions of time and suspensions of this

Opposition to allow settlement discussions to proceed. *See* 8 TTABVUE, 10 TTABVUE, 12 TTABVUE, 14 TTABVUE, 16 TTABVUE, 19 TTABVUE, 21 TTABVUE, 23 TTABVUE. To this day, the parties continue to negotiate settlement without any impasse.

On August 21, 2023, Applicant served its first set of discovery requests. This included nineteen (19) interrogatories, twenty-nine (29) requests for production, and a 30(b)(6) deposition notice to Opposer listing forty-two (42) topics of testimony. Given that the parties' settlement negotiations were still ongoing, and Opposer believed it could reach a settlement, Opposer continued to focus its resources on settlement issues. On September 15, 2023, once it became clear that settlement would not be concluded by the September 20 deadline, Opposer requested a short 14-day extension of time.<sup>1</sup> With this extension, Opposer hoped to be able to wrap up settlement.

Opposer was extremely surprised when Applicant's counsel responded to the request on the afternoon of September 18, 2023 and refused to grant the requested extension. On September 19, 2023 at 12:00p.m., Opposer's counsel, Jodi DeSchane, and Applicant's counsel, Robert Weisbein, met by video conference to discuss this motion. During this meet and confer session, Applicant's counsel maintained his refusal to grant the 14-day extension. He instead stated that he would only grant Opposer a 2-day extension to respond to Applicant's discovery requests and would not extend any case deadlines. Given the volume and complexity of Applicant's discovery requests, an extension of only two days is not sufficient for Opposer to prepare its discovery responses. As a result, Opposer is required to bring this motion.

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<sup>1</sup> Opposer is not attaching the parties' email communications concerning Opposer's request for a 14-day extension of time to respond to Applicant's discovery requests because the communications include detailed settlement terms and negotiations.

### **GOOD CAUSE EXISTS FOR A 14-DAY EXTENSION OF TIME**

An extension is warranted in this case. Because Opposer is requesting the extension *before* the deadline to respond to Applicant's discovery requests, Opposer need only show good cause, not the higher standard of excusable neglect. Fed. R. Civ. P. 6(b); TBMP § 509.01(a) ("If the motion is filed prior to the expiration of the period as originally set or previously extended, the motion is one to extend a period that has not yet closed (often referred to as a motion to 'extend'), and the moving party need only show good cause for the requested extension.").

Good cause exists because this is Opposer's first request for an extension of time to respond to Applicant's discovery requests. Typically, out of courtesy, counsel will grant at least one extension under these circumstances. Opposer seeks only a short 14-day extension of the original deadline. While Opposer is filing this motion on the eve of the deadline, Applicant did not notify Opposer that it would not grant an extension until yesterday afternoon.

"Generally, the Board is liberal in granting extensions of time before the specified period 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." *Trans-High Corp. v. JFC Tobacco Corp.*, 127 U.S.P.Q.2D (BNA) 1175, 1177 (TTAB 2018). Opposer has not been negligent nor acted in bad faith nor abused the privilege of extensions. To the contrary, Opposer has acted in good faith, agreeing to all of Applicant's extension requests. Opposer has also worked in good faith to try to settle this matter for months, and negotiations are still ongoing. Opposer relied on Applicant to also act in good faith but unfortunately has now experienced adversarial tactics and gamesmanship.

The requested 14-day extension of time will not adversely impact the case schedule, cause unreasonable delay, or otherwise prejudice Applicant. The extension comports with the parties' prior course of conduct and will allow the parties to continue efforts to resolve the matter, while

at the same time providing Opposer with a reasonable amount of time to respond to Applicant’s extensive discovery requests.

**CONCLUSION**

In view of the foregoing, Opposer respectfully requests that its motion for a 14-day extension of time be granted. Specifically, Opposer seeks to extend the deadline for its response to Applicant’s discovery requests from September 20, 2023 to October 4, 2023. Opposer also seeks to extend all case deadlines by 14 days, as set forth below:

Time to Answer	03/21/2022 (CLOSED)
Deadline for Discovery Conference	04/20/2022 (CLOSED)
Discovery Opens	04/20/2022 (CLOSED)
Initial Disclosures Due	05/20/2022 (CLOSED)
Expert Disclosures Due	09/17/2023 (CLOSED)
Discovery Closes	10/31/2023
Plaintiff's Pretrial Disclosures Due	12/15/2023
Plaintiff's 30-day Trial Period Ends	01/29/2024
Defendant's Pretrial Disclosures Due	02/13/2024
Defendant's 30-day Trial Period Ends	03/29/2024
Plaintiff's Rebuttal Disclosures Due	04/13/2024
Plaintiff's 15-day Rebuttal Period Ends	05/13/2024
Plaintiff's Opening Brief Due	07/12/2024
Defendant's Brief Due	08/11/2024
Plaintiff's Reply Brief Due	08/26/2024
Request for Oral Hearing (optional) Due	09/05/2024

On September 19, 2023, Opposer's counsel, Jodi DeSchane, met and conferred by video conference with Applicant's counsel, Robert Weisbein, regarding the requested 14-day extension, and Applicant's counsel refused to agree to Opposer's request.

Finally, Opposer requests that the Board suspend this matter pending disposition of the instant motion.

Dated: September 19, 2023

/s/ Hara K. Jacobs

Hara K. Jacobs

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Company*

**CERTIFICATE OF SERVICE**

I, Carly Gubernick, hereby certify that I served, by e-mail and on the date below, a true and correct copy of the Opposer’s Motion to Extend Time to Respond to Discovery Requests and All Subsequent Deadlines by Fourteen Days upon the Attorney of Record for the Applicant of Application Serial No. 90075528 by e-mail on the date below:

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Dated: September 19, 2023

/s/ Carly Gubernick  
Carly Gubernick