**UNITED STATES PATENT AND TRADEMARK OFFICE**
**Trademark Trial and Appeal Board**
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November 16, 2023

Opposition No. 91284522 (Parent)
Opposition No. 91287521

*Rao's Specialty Foods, Inc.*

*v.*

*1729 Investments LLC*

**Ashley D. Hayes, Interlocutory Attorney:**

On November 15, 2023, the Board held a teleconference with the parties to address Applicant's motion, filed October 31, 2023, for an extension of time to respond to Opposer's discovery requests served October 5, 2023. 10 TTABVUE.[1] The motion was contested. The participants in the conference were Laura K. Pitts, counsel for Opposer; Randy Michels, counsel for Applicant; and Ashley D. Hayes, Interlocutory Attorney for the Board.

As stated during the call, Applicant's motion to extend is **granted** to the extent set forth herein.

[1] Citations to the record or briefs in this order are 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. Citations herein are to Opposition No. 91284522 unless otherwise stated.

## I. Background

Applicant seeks to register the standard character mark Rao Meka for wine in International Class 33.[2] Opposer opposes registration thereof, alleging a claim of likelihood of confusion pursuant to Trademark Act Section 2(d), 15 U.S.C. § 1052(d), with its prior used and registered RAO's and RAO's-formative marks in connection with a variety of goods in International Classes 29 and 30.[3] Discovery in this proceeding opened on June 27, 2023. 2 TTABVUE 3. Immediately thereafter, proceeding dates were extended due to the parties' settlement negotiations. *See* 5-8 TTABVUE.

Opposer served its first set of requests for production of documents and things, first set of interrogatories, and first set of requests for admission (collectively "Discovery Requests") on October 5, 2023. 10 TTABVUE 2, 7-22. Originally, Applicant's responses thereto were due on or before November 6, 2023. *See* Trademark Rule 2.120(a)(3), 37 C.F.R. § 2.120(a)(3) ("Responses to interrogatories, requests for production of documents and things, and requests for admission must be served within thirty days from the date of service of such discovery requests.").

On October 11, 2023, Applicant requested a two-week extension of time to respond to the Discovery Requests in view of Applicant's principal being out of the country for

[2] Application Serial No. 97251041, filed February 2, 2022, based on an assertion of a bona fide intent to use pursuant to Trademark Act Section 1051(b), 15 U.S.C. § 1051(b).

[3] Opposer pleads ownership of eleven registrations for ROA's and RAO's-formative marks in support of its likelihood of confusion claim. 1 TTABVUE 1-5, 8-10. As discussed below in Section IV, Opposer has moved for leave to file an amended notice of opposition alleging additional grounds for opposing the subject Application. 9 TTABVUE.

two weeks during the response period. 10 TTABVUE 3, 27-28. Rather than consent to the two-week extension, on October 16, 2023, Opposer "offered to agree to a 1-week extension for Applicant to respond to Opposer's Discovery Requests if Applicant would consent to Opposer's proposed amendment to its Notice of Opposition." 11 TTABVUE 4. On October 30, 2023, after counsel for Applicant was unable to obtain feedback from his client regarding the proposed amendment, 11 TTABVUE 5, Opposer filed its motion to amend the notice of opposition. 9 TTABVUE. On October 31, 2023, Applicant filed its motion for an extension of time to respond to Applicant's Discovery Requests. 10 TTABVUE. Opposer responded thereto on November 7, 2023. 11 TTABVUE. The Board agreed to conduct a telephone conference on the motion to extend to expedite the resolution thereof. Applicant's time to respond to the motion to amend has not yet expired.

## II. Applicant's Motion to Extend Granted[4]

The standard for allowing an extension of a prescribed period prior to the expiration of that period as originally set, or as reset, is good cause. *See* Fed. R. Civ. P. 6(b)(1)(A); *Trans-High Corp. v. JFC Tobacco Corp.*, 127 USPQ2d 1175, 1176 (TTAB 2018). Here, Applicant filed its motion prior to November 6, 2023, the date by which its responses to the Discovery Requests were originally due. Accordingly, the proper standard to apply is good cause.

[4] The Board has considered the parties' briefs and arguments, presumes the parties' familiarity with the factual bases for their filings, but addresses the record only to the extent it deems warranted. *See Guess? IP Holder LP v. Knowluxe LLC*, 116 USPQ2d 2018, 2019-20 (TTAB 2015). During the November 15, 2023 telephone conference, Applicant was provided the opportunity to reply to Opposer's response to the motion to extend, but declined to do so.

"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.,* 127 USPQ2d at 1177 (citing *Am. Vitamin Prods., Inc. v. Dowbrands Inc.*, 22 USPQ2d 1313, 1314 (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) (citing *Sunkist Growers, Inc. v. Benjamin Ansehl Co.*, 229 USPQ 147 (TTAB 1985)).

Here, there is no evidence that Applicant has been negligent or acted in bad faith, and this is its first request for an extension. Moreover, Applicant contends the extension of time is warranted because Applicant is a single member limited liability company and its principal, Rao Meka, was out of the country for two weeks beginning October 17, 2023. 10 TTABVUE 3.

As discussed during the telephone conference, the Board finds that Applicant has shown good cause to extend its time to respond to the Discovery Requests. Accordingly, Applicant's motion to extend is **GRANTED**. During the telephone conference, the Board allowed Applicant an extension of time to respond to the Discovery Requests until November 22, 2023. However, upon further review and considering the upcoming holiday and consolidation of this proceeding with Opposition No. 91287521 (discussed below in Section V), the Board's determination

is modified to allow Applicant until **November 30, 2023** to respond to the Discovery Requests.

## III. Duty To Cooperate in Discovery

As discussed during the conference, each party has a duty to cooperate throughout this proceeding and to make a good faith effort to satisfy the reasonable needs of the opposing party. *See Panda Travel Inc. v Resort Option Enters., Inc.*, 94 USPQ2d 1789, 1791 (TTAB 2009). Indeed, the Board expects full cooperation by the parties with one another in the disclosure and discovery process, and looks with extreme disfavor on those who do not so cooperate. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 408.01 (2023). As such, the Board expects the parties to cooperate with one another in the scheduling of discovery, including accommodating a reasonable extension of time to respond without requiring a quid pro quo. *Cf. Sunrider Corp. v. Raats*, 83 USPQ2d 1648, 1654 (TTAB 2007) (parties have a duty to cooperate in resolving conflicts in the scheduling and taking of depositions).[5]

## IV. Opposer's Amended Notice of Opposition Accepted

As set forth above, on October 30, 2023, Opposer filed a motion for leave to amend the notice of opposition. 9 TTABVUE. Although Applicant's time to respond thereto has not yet expired, during the conference, counsel for Applicant advised that

[5] Indeed, as discussed during the conference, Applicant's request for a two-week extension of time to respond to Opposer's Discovery Requests was entirely reasonable. As also discussed, Opposer's refusal to accommodate such a reasonable request, and to only consider agreeing to a one-week extension if Applicant consented to Opposer's proposed amended notice of opposition, falls well short of the level of cooperation the Board expects between the parties.

Applicant does not intend to oppose the motion. Accordingly, and as also discussed during the conference, Opposer's motion to amend is **granted**. *See* Trademark Rule 2.127(a), 37 C.F.R. § 2.127(a). The amended notice of opposition, 9 TTABVUE 11-45, is accepted and is Opposer's operative pleading herein.[6]

Applicant is allowed **THIRTY (30) DAYS** from the date of this order in which to respond to the amended notice of opposition.

## V. Consolidation of Opposition Nos. 91284522 and 91287521

Subsequent to the Board's conference with the parties on Applicant's motion to extend, it came to the Board's attention that Opposition No. 91284522 and 91287521 involve the same parties and common questions of law and fact. It is therefore appropriate to consolidate these proceedings pursuant to Fed. R. Civ. P. 42(a). *See* TBMP § 511.

When cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases. *See* Fed. R. Civ. P. 42(a); *see also Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154, 1156 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382, 1384 n.3 (TTAB 1991). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense which may be gained from consolidation, against any prejudice or inconvenience which may be caused thereby. *See* TBMP § 511.

Consolidation is discretionary with the Board, and may be ordered upon motion granted by the Board, upon stipulation of the parties approved by the Board, or upon

[6] In so accepting, the Board makes no determination as to the sufficiency of the pleading.

the Board's own initiative. *See, e.g., Wisc. Cheese Grp., LLC v. Comercializadora de Lacteos y Derivados S.A. de C.V.*, 118 USPQ2d 1262, 1264 (TTAB 2016) (motion to consolidate granted); *Venture Out Props. LLC v. Wynn Resorts Holdings LLC*, 81 USPQ2d 1887, 1889 (TTAB 2007) (consolidation ordered sua sponte).

The parties to these proceedings are identical and the proceedings present related issues of law and fact. In particular, Opposer pleads claims of likelihood of confusion under Trademark Act Section 2(d), lack of a bona fide intent to use under Trademark Act Section 1(b), and that Applicant's mark is primarily merely a surname pursuant to Trademark Act Section 2(e)(4) in each proceeding. Moreover, Opposer pleads ten of the same registrations in support of its claims in each proceeding, and the marks in the involved Applications are similar in part. Accordingly, consolidation is appropriate and the Board exercises its discretion sua sponte to consolidate Opposition Nos. 91284522 and 91287521. *See* Fed. R. Civ. P. 42(a); *see also* TBMP § 511. The consolidated proceedings may be presented on the same record and briefs. *See Hilson Rsch. Inc., v. Soc'y for Human Res. Mgmt.*, 27 USPQ2d 1423, 1424 n.1 (TTAB 1993); *see also* TBMP § 511.

The Board file will be maintained in Opposition No. 91284522 as the "parent case." From this point on, with the exception of the pleadings, only a single copy of all motions and submissions should be filed, and each submission should be filed in the parent case only, but the caption should contain all consolidated proceeding numbers,

listing and identifying the parent case first.[7] Applicant's response to the amended notice of opposition (discussed above in Section IV), should be filed in this proceeding only.

The parties are reminded that consolidated cases do not lose their separate identity because of consolidation. Each proceeding retains its separate character and requires entry of a separate judgment. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings and a copy of the final decision shall be placed in each proceeding file. *See* TBMP § 511.

Finally, it is the Board's practice to reset conference, disclosure, discovery and trial dates for consolidated proceedings in accordance with the most recently instituted of the consolidated cases. Accordingly, dates are **reset** as set forth in the schedule below:

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| Deadline for Discovery Conference in Opposition No. 91287521 only | 12/14/2023 |
| Discovery Opens in Opposition No. 91287521 only | 12/14/2023 |
| Time to Answer Amended Notice of Opposition in Opposition No. 91284522 only | 12/16/22 |
| Initial Disclosures Due in Opposition No. 91287521 only | 1/13/2024 |
| Expert Disclosures Due | 5/12/2024 |
| Discovery Closes | 6/11/2024 |
| Plaintiff's Pretrial Disclosures Due | 7/26/2024 |
| Plaintiff's 30-day Trial Period Ends | 9/9/2024 |
| Defendant's Pretrial Disclosures Due | 9/24/2024 |
| Defendant's 30-day Trial Period Ends | 11/8/2024 |
| Plaintiff's Rebuttal Disclosures Due | 11/23/2024 |

[7] The parties should promptly inform the Board of any other Board proceedings or related cases within the meaning of Fed. R. Civ. P. 42, so that the Board can consider whether further consolidation is appropriate.

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| Plaintiff's 15-day Rebuttal Period Ends | 12/23/2024 |
| Plaintiff's Opening Brief Due | 2/21/2025 |
| Defendant's Brief Due | 3/23/2025 |
| Plaintiff's Reply Brief Due | 4/7/2025 |
| Request for Oral Hearing (optional) Due | 4/17/2025 |

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).