

ESTTA Tracking number: **ESTTA1314766**Filing date: **10/09/2023**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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| Proceeding no. | 91285236 |
| Party | Plaintiff Nelson's Green Brier Distillery, LLC |
| Correspondence address | EDWARD F. MALUF SEYFARTH SHAW LLP 620 EIGHTH AVE 32ND FLOOR NEW YORK, NY 10018 UNITED STATES Primary email: emaluf@seyfarth.com Secondary email(s): jheinbockel@seyfarth.com, rterzoli@seyfarth.com, ttabdocket@seyfarth.com 212-218-5500 |
| Submission | Opposition/Response to Motion |
| Filer's name | John C. Heinbockel |
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| Signature | /John C. Heinbockel/ |
| Date | 10/09/2023 |
| Attachments | 2023-10-09 GLENBRIAR -- Opp to 2nd Unconsented Mt for Ext.pdf(125152 bytes) |

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

In the Matter of Application Serial No. 97/325,559
Published in the Official Gazette of February 14, 2023

NELSON'S GREEN BRIER DISTILLERY, LLC,

Opposer,

v.

TRINITY BAY LLC,

Applicant.

Opposition No. 91285236

**OPPOSER'S OPPOSITION TO APPLICANT'S
SECOND UNCONSENTED MOTION TO EXTEND
TIME TO ANSWER, WITH DECLARATION IN SUPPORT**

Preliminary Statement

On July 1, 2023, Applicant moved to extend its deadline to answer by 150 days, or until December 1, 2023, on the basis that it needed additional time to investigate the claims. The Board granted Applicant limited relief, finding that Applicant did "not adequately justify" its request but setting a new deadline to answer of October 6. Now, for the second time and on the same basis, Applicant moves to extend its deadline to December 6, 2023. Applicant's motion serves no purpose but to delay these proceedings and circumvent the Board's previous order. It should therefore be denied.

Argument

Applicant fails to show good cause justifying further extension. Opposer first requested an extension of time to oppose the Application on March 13, 2023. Now, more than six months after Applicant first learned of Opposer's objections to registration of Applicant's Mark, Applicant again asserts, without any substantive explanation or supporting facts, that it needs additional time

to investigate the claims and retain representation. The Board found that Applicant did “not adequately justify” its earlier motion for such a long extension and a deadline of December 1. [8 TTABVUE 5 n.5.] Now, Applicant’s motion seeks an even later deadline of December 6.

“[A] motion to extend must set forth with particularity the facts said to constitute good cause; ‘cursory or conclusory allegations that are denied unequivocally by the nonmovant, and that are not otherwise supported by the record, will not constitute a showing of good cause.’”

Trans-High Corp. v. JFC Tobacco Corp., 127 USPQ2d 1175, 1177 (TTAB 2018) (quoting *Instruments SA, Inc. v. ASI Instruments, Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999); see also *Luemme, Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999). Applicant’s new motion once again lacks any such facts and fails to meet these standards.

Applicant already has had at least 210 days to investigate Opposer’s claims:

- The Application was published for opposition on February 14, 2023;
- Opposer timely requested a 90-day extension to oppose it on March 13, 2023;
- Applicant filed a “Request for Reconsideration” on April 22, 2023, objecting to the extension of time and arguing that there is no likelihood of confusion [TTAB No. 97325559; 3 TTABVUE.];
- Opposer filed a Notice of Opposition on May 26, 2023 [1 TTABVUE.];
- Applicant moved for an extension of all deadlines by 150 days on July 1, 2023 [4 TTABVUE];
- The Board granted Applicant’s motion on a more limited basis, setting a deadline to answer of October 6, 2023 [8 TTABVUE.]
- Applicant has not contacted Opposer since the Opposition was instituted on May 26, 2023, except to serve its latest motion [Declaration of Edward F. Maluf ¶ 1.];

- Therefore, Applicant never sought consent from Opposer for an extension of time to answer the Notice of Opposition, [Id. ¶ 2.];
- Thus, Opposer has not withheld its consent from Applicant in obtaining an extension to file its answer, [Id.];

While the Board grants extensions of time for good cause, there is no good cause here. Bluntly, there never was. Applicant cites no facts, and provides no supporting evidence, that demonstrate its alleged need to extend its deadline to Answer beyond the deadline requested, and denied, in its original motion. Applicant's motion would do nothing more than further delay these proceedings. Applicant's request to extend is facially unreasonable, particularly given Applicant's failure to provide any facts or good cause in support and the previous extension granted by the Board. Accordingly, Opposer respectfully requests that the Board deny Applicant's Motion.

SEYFARTH SHAW LLP

Date: October 9, 2023

By: Edward F. Maluf

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DECLARATION OF EDWARD F. MALUF

I, Edward F. Maluf, am a partner in the firm Seyfarth Shaw LLP, attorneys for Opposer Nelson’s Green Brier Distillery, LLC (“Opposer”) in this opposition proceeding. Pursuant to 28 U.S.C. Section 1746, I hereby declare under penalty of perjury that, to the best of my knowledge, information and belief:

1. Applicant has not contacted Opposer since the Opposition was instituted on May 26, 2023, except to serve its October 5, 2023 motion to extend.
2. Applicant never sought consent from Opposer for an extension of time to answer the Notice of Opposition, and Opposer has not withheld its consent from Applicant in obtaining an extension to file its answer.

Executed on this 9th day of October, 2023 at New York, New York.

/ Edward F. Maluf /
Edward F. Maluf

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSER'S OPPOSITION TO APPLICANT'S SECOND UNCONSENTED MOTION TO EXTEND TIME TO ANSWER, WITH DECLARATION IN SUPPORT** has been served on Applicant Trinity Bay LLC, by forwarding said copy on October 9, 2023, via email, to the correspondence address of record for Applicant at ilialerner@yahoo.com.

/John C. Heinbockel/

John C. Heinbockel