

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**Trademark Trial and Appeal Board**  
**P.O. Box 1451**  
**Alexandria, VA 22313-1451**

Lykos

Mailed: February 22, 2008

Cancellation No.92046880

River West Brands, LLC

v.

Hardee's Food Systems, Inc.

Angela Lykos, Interlocutory Attorney

This case now comes before the Board for consideration of petitioner's motion (filed October 3, 2007) to extend discovery. Respondent contests the motion.

For the reasons set forth below, petitioner's motion to extend discovery is denied.

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) and Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 509 (2d ed. rev. 2004) and authorities cited therein. Generally, the Board is liberal in granting extensions of time before the period to act 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. The moving party, however, retains the burden of persuading the Board that it was

diligent in satisfying its responsibilities and should therefore be awarded additional time. *See, e.g., American Vitamin Products Inc. v. DowBrands Inc.*, 22 USPQ2d 1313 (TTAB 1992); and *Sunkist Growers, Inc. v. Benjamin Ansehl Company*, 229 USPQ 147 (TTAB 1985). When a party does not serve written discovery requests until the final day of discovery and did not attempt to depose its adversary during the prescribed discovery period, a motion to extend discovery will ordinarily be denied. *See Leumme, Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999).

Petitioner previously sought and obtained consent from respondent to extend discovery in this case. The Board approved petitioner's consented motion on July 27, 2007 with discovery reset to close on October 3, 2007. However, petitioner delayed in serving its first set of discovery requests until the last day of the period, arguing that the parties were engaged in settlement discussions. It is well established, however, that the desire to conduct follow-up discovery is not good cause for an extension of the discovery period where the party seeking the extension did not serve initial discovery requests until late in the period as petitioner did in this case. *See id.* Instead, the safest course of action for a party in pursuit of settlement is to seek the adverse party's permission to file a consented motion to suspend. *See Instruments SA, Inc. v.*

*ASI Instruments, Inc.*, 53 USPQ2d 1925 (TTAB 1999). The record reflects that petitioner did not file a stipulation or consented motion to suspend proceedings to allow the parties to discuss settlement. In the absence of such consent, petitioner was expected to comply with its responsibilities.

Accordingly, petitioner's motion to extend the discovery period in this case is hereby denied. In view of the Board's denial, the discovery period remains closed.

Trial dates are reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	CLOSED
30-day testimony period for party in position of plaintiff to close:	4/25/08
30-day testimony period for party in position of defendant to close:	6/24/08
15-day rebuttal testimony period for party in position of plaintiff to close:	8/8/08

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**NEWS FROM THE TTAB:**

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>  
[http://www.uspto.gov/web/offices/com/sol/notices/72fr42242\\_FinalRuleChart.pdf](http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf)

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>