

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

Mailed: December 19, 2011

Cancellation No. 92053537

Modern Housing, LLC

v.

American Casino and
Entertainment Properties, LLC

**George C. Pologeorgis,
Interlocutory Attorney:**

On November 8, 2011, opposer filed a motion to consolidate this proceeding with Opposition No. 91193970. On November 28, 2011, applicant filed a timely response to opposer's motion to consolidate and a cross-motion for summary judgment in Opposition No. 91193970. The Board issued an order on December 13, 2011 suspending this proceeding pending the disposition of the aforementioned motions.

This case now comes before the Board for consideration of opposer's motion (filed December 16, 2011) to extend its time to file a reply brief in support of its motion to consolidate, as well as its response to applicant's cross-motion of summary judgment in Opposition No. 91193970. The Board notes that applicant's time to respond to opposer's

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motion to extend has yet to expire, however, in view of the time-sensitive nature of opposer's motion, the Board has entertained opposer's motion without a response from applicant.

For the reasons set forth below, (1) opposer's motion to extend its time to file and serve its reply brief in support of its motion to consolidate is **denied** and (2) opposer's motion to extend its time to file and serve its response to applicant's cross-motion for summary judgment in Opposition No. 91193970 is **granted**.

In support of the motion to extend, opposer contends that its counsel has been heavily engaged in briefing another matter before the United States Court of Appeals for the First Circuit, which brief is due to be filed by January 5, 2012. In addition, opposer maintains that its counsel has been called up to perform two weeks of jury duty in January 2012, dates that were already adjourned once to accommodate the aforementioned appellate briefing schedule. Opposer further contends that although applicant has only agreed to an extension up to, and including, January 9, 2012, opposer argues that the extension consented to by applicant provides insufficient time in light of opposer's counsel's prior commitments identified above.

We note that opposer's reply brief in support of its motion to consolidate is due by December 18, 2011 and that

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its response to applicant's cross-motion for summary judgment is due by January 2, 2012. See Trademark Rules 2.127(a) and 2.127(e).

Opposer is requesting that its time to file and serve both its reply brief in support of its motion to consolidate and response to applicant's motion for summary judgment be extended until February 1, 2012.

We first turn to opposer's request to extend its time to file and serve its reply brief in support of its motion to consolidate. Pursuant to Trademark Rule 2.127(a), the time for filing a reply brief in support of a motion will not be extended. (emphasis added).

Accordingly, opposer's motion to extend its time to file and serve its reply brief in support of its motion to consolidate is denied. Opposer's reply brief remains due by December 18, 2011. However, inasmuch as December 18, 2011 fell on a Sunday, opposer is allowed until Monday, December 19, 2011 in which to file and serve its reply brief in support of its motion to consolidate. See Trademark Rule 2.196.

We next turn to opposer's motion to extend its time to respond to applicant's cross-motion for summary judgment. Pursuant to Fed. R. Civ. P. 6(b), made applicable to Board proceedings by 37 CFR § 2.116(a), a party may file for an enlargement of the time in which an act is required or

allowed to be done. The moving party must show good cause for the requested extension. See TBMP § 509.01 (3d ed. 2011). 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 allotted therefore. The Board will scrutinize carefully any motion to extend time. See TBMP § 509.01(a) (3d ed. 2011).

Based on the record herein, the Board finds that opposer has demonstrated the requisite good cause for its extension request and that the requested extension of time is not necessitated by opposer's or opposer's counsel's own lack of diligence in taking action during the allotted time therefore. Indeed, the Board has previously found that the press of other litigation may constitute good cause for an extension of time. See *Societa Per Azioni Chianti v. Spoletoduacale*, 59 USPQ2d 1383 (TTAB 2001). Moreover, opposer's counsel's prior commitment to participate in jury duty also constitutes good cause for the extension.

In view of the foregoing, opposer's motion to extend its time to file and serve its response to applicant's cross-motion for summary judgment is **granted**.

Accordingly, opposer is allowed up to, and including, **February 1, 2012** in which to file and serve its response to

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applicant's cross-motion for summary judgment in Opposition No. 91193970.

Proceedings otherwise remain suspended pending the disposition of the parties' respective motions.

Applicant is permitted to file a reply brief in support of its motion for summary judgment in accordance with Trademark Rule 2.127(e)(1).

As a final matter, the Board had suspended these proceedings on April 21, 2011 pending the final disposition of a civil action between the parties in the United States District Court for the District of Nevada. On November 8, 2011, opposer filed a communication with the Board advising that that the district court granted opposer's motion to dismiss for lack of subject matter jurisdiction on October 19, 2011 and thereby dismissed the civil action without prejudice. Accordingly, this proceeding is no longer deemed suspended pending the final disposition of the civil action but nonetheless remains suspended pending the disposition of opposer's motion to consolidate and applicant's cross-motion for summary judgment.