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

Proceeding	92077126
Party	Defendant Deltona Transformer Corporation DBA DELTRAN
Correspondence Address	DELTONA TRANSFORMER CORPORATION 801 INTERNATIONAL SPEEDWAY BLVD DELAND, FL 32724 UNITED STATES No email provided. No phone number provided.
Submission	Motion to Extend
Filer's Name	Patricia M. Flanagan
Filer's email	ipdocket@foxrothschild.com, pflanagan@foxrothschild.com, abraunstein@foxrothschild.com, gbatteiger@foxrothschild.com, jpratt@foxrothschild.com
Signature	/Patricia M. Flanagan/
Date	06/14/2021
Attachments	DTC Motion For Extension of Time to File Answer - Proceeding 92077126.pdf(143827 bytes )

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

In the Matter of Registration No. 4818135  
For Mark: SOLAR TENDER  
Registered: September 22, 2015

THE NOCO COMPANY,

Petitioner,

v.

DELTONA TRANSFORMER CORPORATION,

Registrant.

Cancellation No. 92077126

**REGISTRANT DELTONA TRANSFORMER CORPORATION'S  
MOTION FOR EXTENSION OF TIME TO FILE ANSWER**

Registrant Deltona Transformer Corporation (“DTC”), pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and Section 509 of the Trademark Trial and Appeal Board Manual of Procedure, respectfully moves for an extension of time to respond to Petitioner The NOCO Company’s (“NOCO”) Petition for Cancellation (this “Cancellation”). In support of this instant motion, DTC states as follows:

On June 11, 2021, DTC filed a motion to suspend (the “Motion to Suspend”) this Cancellation proceeding until final determination of an ongoing civil action between the parties. 4 TTABVUE. As detailed in the Motion to Suspend, the overlap between the claims and issues in the civil action will not only have a direct bearing on but will likely completely resolve the issues raised in this Cancellation.<sup>1</sup> In addition, thirteen prior-filed Board proceedings between the

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<sup>1</sup> On May 25, 2021, the federal jury unanimously concluded that the BATTERY TENDER® trademarks were willfully and intentionally infringed by NOCO and rejected NOCO’s central defense that the trademark had become generic. During the lawsuit and trial, NOCO cited to, and

parties have already been suspended pending resolution of the civil action. The Motion to Suspend has not yet been fully briefed by the parties and is still pending.

DTC's answer in this proceeding is currently due on June 21, 2021. 2 TTABVUE 3. DTC respectfully requests that the Board extend DTC's time to answer until after the Board rules on the pending Motion to Suspend. If the pending Motion to Suspend is granted, an answer will not be required unless and until the suspension is lifted and the Board sets a new schedule for this proceeding. If the pending Motion to Suspend is denied, DTC requests an extension of sixty (60) days from the date of the Board's order denying the Motion to Suspend, to file its answer.

Considering the Board's policy to suspend proceedings when the parties are involved in a civil action which may be dispositive of or have bearing on the Board case, good cause exists for the requested relief. An extension of time will conserve the parties' and the Board's time and resources by avoiding the need to address pleadings, which will be unnecessary if the pending Motion to Suspend is granted. This extension is being sought in good faith and not for delay or any other improper purpose, and it will provide DTC with a reasonable opportunity to prepare its response to NOCO's Cancellation.

DTC's counsel conferred with NOCO's counsel, who advised DTC's counsel on June 14, 2021, that Petitioner does not consent to the relief requested herein.

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relied upon, the same evidence it asserts in the instant Petition, including the attached exhibits. However, as noted, the jury fully rejected NOCO's argument that the marks had become generic and specifically found that the associated BATTERY TENDER® trademarks were valid and protectable. While the jury has now fully determined the core issues, including genericness, the lawsuit is not yet finally determined until NOCO exhausts its appellate remedies. *See* TTAB § 510.02(b) ("A proceeding is considered to have been finally determined when an order or ruling that ends litigation has been rendered, and no appeal has been filed, or all appeals filed have been decided and the time for any further review has expired.").

### **Memorandum**

In accordance with the provisions of TBMP §509.01, “a party may file a motion for an extension of the time in which an act may or must be done.” The Board has held “[i]f 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.” 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.” *American Vitamin Prods. Inc., v. Dow Brands, Inc.*, 22 USPQ2d 1313, 1318 (TTAB 1992); *see also PUMA SE v. Advance Inspiration, LLC*, Opposition No. 91249192, 8 TTABVUE 1-2 (TTAB 2020) (granting motion to extend); *Micro Mobio Corporation v. General Motors LLC*, Cancellation No. 92068218, 48 TTABVUE 1-2 (TTAB 2020) (same); *New Gen Partners v. NewGen Silicon Valley Venture LLC*, Cancellation No. 92067607, 7 TTABVUE 1-2 (TTAB 2018) (same).

Here, for the reasons set forth above, DTC has good cause for the requested extension. The request is not necessitated by DTC’s lack of diligence, there is no bad faith on the part of DTC, and DTC has not abused the privilege of extensions. Accordingly, DTC respectfully requests that this motion be granted.

### **Conclusion**

For the foregoing reasons, DTC respectfully requests that the Board grant the present motion for extension of time to answer pending the outcome of DTC’s Motion to Suspend. If the Board grants the pending Motion to Suspend, DTC respectfully requests that the Board set a new

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time to answer if/when the suspension is lifted. If the Board denies the pending Motion to Suspend, DTC respectfully requests that the Board extend DTC's time to respond to the Cancellation by sixty (60) days from the date of the Board's order.

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Respectfully submitted,

**FOX ROTHSCHILD LLP**

/Patricia M. Flanagan/

Patricia M. Flanagan

Alex L. Braunstein

997 Lenox Drive, Building 3

Lawrenceville, New Jersey 08648-2311

Tel.: (561) 804-4477

Fax: (561) 835-9602

Email: pflanagan@foxrothschild.com

abrauntstein@foxrothschild.com

ipdocket@foxrothschild.com

*Counsel for Registrant*

*Deltona Transformer Corporation*

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2021, a true and correct copy of the foregoing was served via e-mail upon counsel for Petitioner as follows:

Ann K. Ford, Esq.  
John M. Nading, Esq.  
Devika Persaud, Esq.  
DLA Piper US, LLP  
500 Eighth St NW  
Washington, DC 20004  
Tel: (202) 799-4000  
Fax: (202) 799-5000  
Email: dctrademarks@dlapiper.com, ann.ford@dlapiper.com,  
john.nading@dlapiper.com, devika.persaud@dlapiper.com;  
hajra.nashin@dlapiper.com

*Counsel for Petitioner The NOCO Company*

/Patricia M. Flanagan/  
Patricia M. Flanagan