

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR**

In re Nash Studio Inc.,

Applicant,

Decision on Request for Extension of
Time under 37 C.F.R. § 2.145(e)

Appl. Ser. No. 79/284,379

MEMORANDUM AND ORDER

On July 26, 2021, Applicant Nash Studio Inc. (“Applicant”), filed a request for an extension of time to appeal the Trademark Trial and Appeals Board’s May 27, 2021, final decision to the United States Court of Appeals for the Federal Circuit. The Board’s May 27 decision affirmed the refusal to register the mark of Application Serial No. 79/284,379. The request is GRANTED in part and DENIED without prejudice in part, for the reasons set forth below.

Under 37 C.F.R. § 2.145(e)(1)(i), the Director may, for good cause, extend the time to appeal a Board decision under 15 U.S.C. § 1071(a), if the request is made in writing before the period for appealing expires. Under 37 C.F.R. § 2.145(d)(1), the period for filing a notice of appeal under 15 U.S.C. § 1071(a) expires sixty-three (63) days from the date of the final decision of the Board. The Board’s final decision was mailed on May 27, 2021, and 63 days from May 27 is July 29, 2021. Accordingly, this request is timely and will be considered under the good cause standard.

Although the good cause standard for granting extensions of time is relatively liberal, the requesting party “must set forth with particularity the facts said to

constitute good cause.” *Trans-High Corp. v. JFC Tobacco Corp.*, 127 USPQ2d 1175, 1177 (TTAB 2018) (citations and internal quotation marks omitted).^{*} These facts must provide a basis for the Director to find that the requesting party “was diligent in meeting its responsibilities” and has “not been guilty of negligence or bad faith.” *Id.*

The request explains that Applicant is a Japanese company, that Japan has seen a surge of COVID infections recently, and that the disruptions caused by this surge have been exacerbated by intervening Japanese national holidays and disruptions related to the Summer Olympic Games currently taking place there.

37 C.F.R. § 2.145(d) reflects the USPTO’s judgment that, ordinarily, 63 days is sufficient time within which to complete the tasks necessary to determining whether to seek judicial review, even with the routine range of disruptions that people, businesses, and lawyers face on a day-to-day basis. While COVID and unusual local logistical disruptions may make it more difficult to comply with ordinary deadlines, the request here cites *only* general circumstances, yet requests a relatively long extension of 60 days without explaining how the identified circumstances made Applicant unable to determine whether to seek judicial review of the Board’s decision within the initial 63-day period and why Applicant requires another 60 days to make that determination. The substantiality and particularity of the showing of good cause

^{*} While a request to the Director to extend the time to seek judicial review of a Board decision is not technically a request to the Board, the Director agrees with the Board’s formulation of the good cause standard and applies it to timely requests under section 2.145(e)(i).

is proportional to the length of the requested extension: a longer extension will require a more particularized showing than that required for a shorter extension. While the Director presumes that the identified circumstances have made various forms of communication more difficult such that some extension is warranted, the facts as presented do not support a 60-day extension.

Accordingly, the Director DENIES the request to the extent it asks for a 60-day extension, but GRANTS Applicant a 30-day extension of the deadline, through and including August 30, 2021, within which to appeal to the Federal Circuit or request a further extension of that deadline upon a showing of sufficient good cause. *See* 37 C.F.R. § 2.145(d)(4)(ii) (where a deadline falls on a weekend or holiday, the deadline is moved to the next business day).

ANDREW HIRSHFELD,
*Performing the Duties and Functions of Under Secretary
of Commerce for Intellectual Property and Director of the
United States Patent and Trademark Office,*

Date: August 3, 2021

By: /Thomas W. Krause/
THOMAS W. KRAUSE
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