

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE DIRECTOR

**In re Red Lobster Hospitality LLC,**

Applicant

Applications Serial Nos. 85/179,591 & 85/179,618

Marks: RED LOBSTER FRESH FISH LIVE  
LOBSTER & Design

Filing Date: November 10, 2010

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

Consolidated Ex Parte Appeal  
No. 85/179,591

MEMORANDUM AND ORDER

On October 17, 2017, Applicant Red Lobster Hospitality LLC (“Applicant”) filed a request for an extension of time of ninety (90) days to seek judicial review of the Trademark Trial and Appeal Board’s June 28, 2017, decision, which had affirmed a refusal to register Applicant’s marks without entry of a disclaimer of the word LOBSTER in the phrase RED LOBSTER, pursuant to Section 6 of the Lanham Act, 15 U.S.C. § 1056, and the Board’s August 22, 2017, decision denying Applicant’s motion to reconsider the June 28, 2017, decision. The request is GRANTED for the reasons set forth below.

Under 37 C.F.R. § 2.145(e)(1)(i), the Director may extend the time for seeking judicial review of a Board decision for good cause if the request is made in writing before the period for filing an appeal or commencing a civil action expires. Under 37 C.F.R. § 2.145(d), the period for filing a notice of appeal or a civil action expires sixty-three (63) days from the date of the final decision of the Board, and in a case like this where a request for reconsideration was timely filed, sixty-three days from the Board’s action on the request. The Board’s denial of the reconsideration request was mailed on August 22,

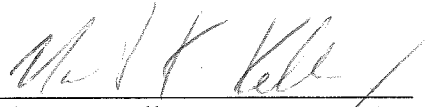
2017, making any appeal due by October 24, 2017, so this request for an extension of time is timely and considered under the good cause standard.

Applicant, through counsel, states that the requested extension is needed so that Applicant's in-house and outside counsel may consider its options for obtaining further review. Applicant indicates it is evaluating whether to raise a perceived error in the Board's reconsideration decision with the Board, whether to file an appeal to the Federal Circuit, or whether to file a civil action under 15 U.S.C. § 1071(b). Applicant states that if it chooses to seek further action from the Board, it could avoid unnecessary expenditure of resources by the USPTO's Solicitor's Office and by any court in which review is sought. Accordingly, it appears that there is good cause for the requested ninety (90) day extension of time to appeal.

Accordingly, the request for extension of time is GRANTED. Applicant has an additional ninety (90) days from October 24, 2017, within which to seek review of the Board's decision. Applicant should note that, because the extension requested by Applicant and granted by this order is lengthier than extensions normally issued by the Director, the showing of good cause for any further extension of time will be measured against the background of the ninety-day extension granted herein.

JOSEPH MATAL,  
*Performing the Duties and Responsibilities  
of the Under Secretary of Commerce for  
Intellectual Property and Director of The  
United States Patent and Trademark Office*

Date: October 23, 2017

By:   
Nathan K. Kelley  
Deputy General Counsel for Intellectual  
Property Law and Solicitor