

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE DIRECTOR

**In re Sugarlands Distilling Company, LLC,**

Applicant

Application No.: 85818277

Mark: SUGARLANDS DISTILLING COMPANY

Filing Date: January 8, 2013

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

Ex Parte Appeal No. 85818277

MEMORANDUM AND ORDER

On January 12, 2016, Applicant Sugarlands Distilling Company, LLC (“Applicant”) filed a request for an extension of time of thirty (30) days to file an appeal seeking judicial review of the decision of the Trademark Trial and Appeal Board, dated November 20, 2015, in which the Board affirmed a refusal to register Applicant’s mark due to likelihood of confusion with a previously-registered mark, pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

Under 37 C.F.R. § 2.145(e), the Director may extend the time for filing an appeal for good cause if the request is made in writing before the time for filing an appeal expires. Under 37 C.F.R. § 2.145(d), the time for filing a notice of appeal expires two months after the date of the Trademark Trial and Appeal Board’s decision in the case. The Board decision at issue was mailed on November 20, 2015, so this request for an extension of time to appeal that ruling is timely.

Further, Applicant, through its current counsel, states that the requested extension is needed, in part, because counsel has recently undergone significant surgical procedures

to preserve his sight, and that additional surgical procedures may be needed. It therefore appears that there is good cause for the requested thirty (30) day extension of time to appeal.

Counsel should be aware that the second reason set forth in the request for extension of time—that counsel is actively negotiating a consent agreement with the owner of the blocking registration and, if successful in obtaining such an agreement, wishes to submit the same to the Board—is not a valid reason for requesting an extension of time to seek judicial review. That is because, in an *ex parte* appeal, the Board may not re-open a case except in two narrow circumstances not applicable here. *See* Trademark Board Manual of Procedure § 1218; 37 CFR § 2.142(g); *In re Mack Trucks, Inc.*, 189 USPQ 642, 643 (Comm’r 1976) (petition to reopen for letter of consent and for amendment of identification of goods denied).

Further, it should be noted that, although there are two possible avenues by which disappointed applicants can seek judicial review of adverse Board decisions, *see* 15 U.S.C. § 1071(a) (review by the U.S. Court of Appeals for the Federal Circuit); 15 U.S.C. § 1071(b) (review by a civil action in a U.S. District Court), it is only in the latter § 1071(b) civil action in district court that a newly-obtained consent agreement can be submitted. In the former § 1071(a) appeal, the record on appeal is limited to the record that was before the USPTO. *See* 15 U.S.C. § 1071(a)(4).

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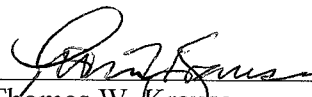
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Accordingly, the request is GRANTED for the medical reasons noted above. Applicant has an additional thirty (30) days, through and including February 22, 2016, to seek review of the Board's decision.

MICHELLE K. LEE,  
*Under Secretary of Commerce for  
Intellectual Property and Director of  
The United States Patent and Trademark  
Office*

Date: January 19, 2016

By:   
Thomas W. Krause  
Acting Deputy General Counsel for  
Intellectual Property Law and Acting  
Solicitor