

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE DIRECTOR

ARMIDA WINERY, INC.,

Petitioner,

v.

GRAVEYARD VINEYARDS,

Respondent

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

Cancellation No. 92/059,267

MEMORANDUM AND ORDER

On March 17, 2020, Respondent Graveyard Vineyards (“Respondent”), filed a request for an extension of time of sixty (60) days within which to seek judicial review of the Trademark Trial and Appeal Board’s January 23, 2020, decision ordering cancellation of Respondent’s Registration No. 3,629,850 for the mark WINE TO DIE FOR!. The request is GRANTED for the reasons set forth below.

Background

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. The Board’s final decision was mailed on January 23, 2020, making the filing of any appeal or of any civil action challenging such decision due no later than March 26, 2020. Accordingly,

this request for an extension of time is timely and the Director will apply the good cause standard.

Respondent asserts that it:

needs additional time to attempt to negotiate a settlement with Petitioner and, failing that, Registrant needs additional time to appeal or commence a civil action. These tasks are made more difficult and additional time is needed in light of the currently unfolding coronavirus pandemic, which has resulted in issuance of shelter-in-place orders and other health advisories that affect both Registrant and Registrant's counsel.

Petitioner opposes the request. It contests whether Respondent's reasons constitute good cause because, according to Petitioner, Respondent could already have drafted a notice of appeal, and the coronavirus restrictions were instituted only days ago. Petitioner does not identify any prejudice, except to note that the proceedings may continue if the request is granted.

Analysis

The Board has noted that, under the good cause standard, it "generally 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." *Jodi Kristopher, Inc. v. Int'l Seaway Trading Corp.*, 88 USPQ2d 1798, 1800 (TTAB 2008). While a petition to the Director to extend the time to seek judicial review of a Board decision is not technically a Board proceeding, the Director agrees with this formulation of the standard and will apply it.

The Director finds that there is good cause for the requested sixty (60) day extension of time to seek judicial review. Respondent filed its request for more time over a week before deadline, and there is nothing in either Respondent's request or Petitioner's objection that suggests that Respondent is guilty of negligence or bad faith. Since this is Respondent's first request of this nature, this is not a situation where Respondent has abused the privilege of requesting extensions of time to seek judicial review. And the Director notes that Petitioner's opposition does not reject the possibility of settlement out of hand. Petitioner does note that the Board proceeding has gone on for many years and judicial review will only add to that time. But that observation, by itself, is not enough to be determinative of good cause or to establish prejudice, because that is the case whenever someone seeks an extension of time to seek judicial review of a Board decision.

Decision

Accordingly, the request for extension of time is GRANTED. Respondent has an additional sixty (60) days from March 26, 2020 (*i.e.*, on or before May 25, 2020), within which to seek review of the Board's decision. The Director notes, however, that 60 days represents a substantial extension. As a consequence, any further request for an extension will be disfavored. Given that it appears Respondent has not, until filing this request, communicated its desire to seek a settlement to Petitioner, it should promptly communicate with Petitioner to begin that discussion.

ANDREI IANCU,
*Under Secretary of Commerce for Intellectual Property
and Director of The United States Patent and
Trademark Office*

Date: March 23, 2020

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

Service via email to:

Derek J Westberg (Attorney for Respondent)
Westberg Law Offices
569 Clyde Ave., Suite 530
Mountain View, CA 94043
derek@westberglaw.com, john@claassenlegal.com

Herbert L. Terreri; Grace R. Neibaron (Attorneys for Petitioner)
The Law Offices of Herbert L. Terreri
235 Foss Creek Circle
Healdsburg, CA 95448
bert@terreriilaw.com, grace@neibaronlaw.com, jmang@terreriilaw.com