

Quirky Questions: Do All TTAB Deadlines Extend Through Weekends/Holidays? Practitioners Beware!

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Quirky Questions

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Many practitioners take for granted the fact that any TTAB deadlines that fall on a Saturday, Sunday or Federal holiday are automatically extended to the following business day. As it turns out, this isn't *always* the case.

A recent decision on a Petition to the Director in *Asustek Computer Incorporation v. Chengdu Westhouse Interactive Entertainment Co.* affirmed a precedential TTAB decision that a motion to compel was not timely filed on Monday, September 25, 2017, the day after the deadline that fell on a Sunday. Under Trademark Rule, 2.120(f)(1), “[a] motion to compel discovery must be filed prior to the deadline for pretrial disclosures for the first testimony period.” Because the deadline for pretrial disclosures was Monday, September 25, 2017, Petitioner had until Sunday, September 24, 2017 to file its motion to compel. Petitioner argued that its deadline to file the motion to compel rolled over to Monday, relying on Trademark Rule 2.196. That Rule provides that when the last day fixed by statute or regulation for taking any action falls on a Saturday, Sunday or Federal holiday, “the action may be taken...on the next succeeding day that is not a Saturday, Sunday or a Federal holiday.”

The TTAB disagreed that the motion to compel deadline extended to Monday. The due date for pretrial disclosures was unaffected by Trademark Rule 2.196 and remained Monday, September 25, 2017. Petitioner therefore remained obligated to file any motion

to compel no later than the day before that date. As the Board explained, Trademark Rule, 2.120(f)(1) does not fix a particular deadline for filing a motion to compel but, instead, ensures that any such motion must be filed before pretrial disclosures occur. Because Trademark Rule 2.196 does not apply, the TTAB declined to consider Petitioner's motion to compel as untimely.

These particular facts are not the only scenario in which a deadline may not extend through a weekend/holiday. For example, the TTAB has already held that Trademark Rule 2.196 does not apply to the requirement that discovery be served early enough so responses will be due no later than close of discovery.

So next time your docket says that a deadline falls on a weekend or federal holiday, think twice before assuming that the deadline will roll over to the next business day. Practitioners need to look at the nature of the deadline to see if it is a prescribed deadline that is governed by Trademark Rule 2.196, or a deadline that may fall outside the scope of Trademark Rule 2.196, for example because it is based on an action that needs to occur before another deadline occurs.

This post is part of a regular series called Quirky Questions: TMCA Edition. Our labor and employment colleagues have a great blog, Quirky Questions, where they answer unanticipated questions regarding the workforce. We liked the concept (and their blog) so much that we've started a series of quirky question posts here on The TMCA. We hope you enjoy the series — feel free to send in your suggestions for quirky questions about trademarks, copyrights and advertising.