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EDVA Judge Holds That a Temporary Restraining Order Ends at the Close of Business on the Day of Expiration

Virginia Rocket Docket Blog

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Following up on our [post](#) on obtaining temporary restraining orders and preliminary injunctions in the EDVA, a recent decision by an EDVA judge clarifies that a motion to extend a temporary restraining order (TRO) filed after the close of business on the date the TRO expires is untimely because “the TRO had already expired at the time that the Plaintiff moved the Court” for an extension. [XYZ Corporation v. The Unincorporated Associations Identified in Schedule A](#), Case No. 1:23C-cv-00673-PTG-JFA (E.D.Va. July 25, 2023).

XYZ Corporation involves claims for trademark infringement, counterfeiting, false designation of origin, and patent infringement against alleged counterfeiters selling unauthorized versions of the plaintiff’s products through online marketplaces like eBay, Wish, and AliExpress. On May 23, the plaintiff filed a heavily redacted complaint, which sealed the names of the plaintiff and the defendants. The same day, the plaintiff [moved](#) for a TRO requesting that the court freeze the assets of the defendants’ PayPal and Alipay accounts, and allow expedited discovery regarding the defendants from eBay, PayPal, AliExpress, Alipay, and Wish. District Judge Giles granted the motion and entered a [TRO](#) on June 8.

Judge Giles’ June 8 Order did not specify how long the TRO would remain in place, but Fed. R. Civ. P. 65(b)(2) limits TROs granted without notice to 14 days. Because of delays obtaining the requested information, on June 22, the day that the TRO was scheduled to expire, the plaintiff moved to extend the TRO. Judge Giles [granted](#) the motion the same day and extended the TRO until July 6. Judge Giles’ Order, however, did not specify a time that the TRO expired.

On July 6, because of continuing delays, the plaintiff [filed](#) a second request to extend the TRO, which detailed its efforts to obtain discovery about defendants’ online accounts. The plaintiff apparently filed its motion after the court closed because the next day, Judge Giles entered an Order stating that “the Court was not given ample time to consider and decide upon the Motion before the TRO had already expired” and directing the plaintiff to file a supplemental brief explaining what authority the court had to extend a TRO that has already expired.

In response, the plaintiff filed not one, but two supplemental briefs. In the first, the plaintiff cited several EDVA [cases](#) in which TROs had been extended after they had expired, and argued that good cause existed for extending the TRO because the parties subject to the TRO had yet to comply with it despite the plaintiff’s diligent efforts. In its second brief, the plaintiff argued that late entry of a TRO extension is only pertinent if the party to

which the TRO is directed is held in contempt.

In her July 25 Order, Judge Giles rejected these arguments, noting that the plaintiff filed its second motion for an extension of the TRO “after the close of business on July 6, 2023. Thus, the TRO had expired at the time the Plaintiff moved the Court for a second extension.” Since, the court stated, the plaintiff had not cited any authority regarding its ability to extend a TRO that has already expired, the motion to extend the TRO was denied.

In her July 7 Order, Judge Giles does not state that the TRO expired before the plaintiff filed its request for an extension. Rather, the July 7 Order states only that the court did not have *sufficient time* to consider the plaintiff’s motion before the TRO expired. The July 25 Order, by contrast, explicitly states that “the TRO had already expired at the time that Plaintiff moved the Court for a second extension.” If that is true, then the TRO expired when the court closed. Rule 65(b)(2), however, states that a TRO may be extended if “a party can *show, prior to the expiration of the order*, good cause for such an extension.” That language implies that the moving party must only make a showing of good cause prior to expiration of the TRO, not that the court must enter an order extending the TRO before it expires. The plaintiff, however, did not make that argument, and so the court did not have an opportunity to consider it.

Regardless, the lesson of the *XYZ Corporation* decision is clear: parties who seek to extend a TRO should not wait until the last minute to make their request. Even filing early in the day on the date a TRO expires should be avoided, as the presiding judge may not be available or other unexpected delays may prevent the court from entering an extension order in time. The clear implication of Judge Giles’ decision is that once a TRO expires, a court is powerless to extend it.

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