

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

FEB 19 2004

_____)	
T-Peg, Inc. and Timberpeg East, Inc.)	
Plaintiffs,)	
v.)	No. C-03-462-M
Stanley J. Isbitski and Vermont Timber Works, Inc.)	
Defendants.)	
_____)	

**PLAINTIFFS' MOTION TO EXTEND TIME FOR
THREE ADDITIONAL MONTHS UNTIL MAY 20, 2004
IN WHICH TO SERVE DEFENDANT STANLEY J. ISBITSKI**

NOW COME the Plaintiffs, T-Peg, Inc. and Timberpeg East, Inc. ("Timberpeg"), by and through their attorneys, Devine, Millimet & Branch, Professional Association, and respectfully submit this motion to extend the time by three additional months until May 20, 2004 in which Timberpeg may serve Defendant Stanley J. Isbitski ("Isbitski") with a Summons and Complaint in this matter. In support of this Motion, Timberpeg states as follows:

1. On October 24, 2003, Timberpeg filed a Complaint alleging copyright infringement and other claims, against Isbitski and Vermont Timber Works, Inc. ("VTW").
2. Timberpeg effected service of the Summons and Complaint on VTW on November 6, 2003. VTW has since filed a Motion to Dismiss, which was denied, and an Answer, which includes counterclaims for abuse of process and wanton conduct.
3. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, Timberpeg has until on or about February 20, 2004 in which to serve Isbitski. Despite diligent efforts, as outlined below, Timberpeg has not been successful serving Isbitski. Timberpeg now seeks an additional three months in which to effect service upon Isbitski.

Relevant Factual Background

4. During Timberpeg's business relationship with Isbitski, Isbitski used post office box addresses for correspondence. One such post office box was P.O. Box 25, Mendham, New Jersey, 07945.

5. According to a business card Isbitski gave Timberpeg, Isbitski was the sales manager for Penstanski Contracting Co., Inc. with an address of P.O. Box 25, Mendham, New Jersey, 07945.

6. At the end of Timberpeg's business relationship with Isbitski, correspondence to the P.O. Box 25 address was returned by the U.S. Post Office marked return to sender, unable to forward.

7. In preparation to serve the Summons and Complaint in this matter, Timberpeg attempted to locate Isbitski through Internet research. Timberpeg's research located a Stanley Isbitski at 2 East Main Street, Mendham, New Jersey, 07945-1505, with a phone number of 973-543-6736. In addition, Timberpeg's research located Pentanski Contracting, Co., in Mendham, New Jersey, 07945, with a phone number of 973-543-6736. Thus, the phone number for Stanley Isbitski at 2 East Main Street, Mendham, New Jersey, matched the phone number for Pentanski Contracting, Co., Inc. which was a business with a known link to Isbitski.

8. Therefore, Timberpeg directed the Morris County Sheriff of Mendham, New Jersey, to attempt to serve Isbitski at 2 East Main Street, Mendham, New Jersey. The Morris County Sheriff was unable to serve Isbitski at that address because 2 East Main Street turned out to be a pharmacy.

9. Timberpeg has continued to search for Isbitski, but its efforts have thus far failed to turn up any other current residential address for Isbitski.

10. Recently, Timberpeg has learned that Isbitski may now be living in the State of Maine.

11. Timberpeg is in the process of, and intends to continue to research Isbitski's whereabouts and serve him with process as soon as possible.

Argument

12. Rule 4(m) of the Federal Rules of Civil Procedure provides that Plaintiffs must serve complaints and summonses within 120 days after the filing of the Complaint. The rule also provides that, upon motion for good cause shown, the court shall extend the time for service for an appropriate period. See Fed.R.Civ.P. 4(m).

13. Under Rule 4(m) good cause requires the showing of a valid reason for the delay, including, among others, evasion of service. See Coleman v. Milwaukee Bd. of Sch. Dirs., 290 F.3d 932, 934 (7th Cir. 2002). While Timberpeg has no direct evidence that Isbitski is actively evading service, his abrupt disappearance has made effecting service unusually difficult, and has created a delay beyond Timberpeg's control. Isbitski has apparently departed from New Hampshire, and, thus far has been very difficult to locate. While Timberpeg cannot represent to this Court that it has located Isbitski, Timberpeg has reason to believe that it might be able to locate and serve him in the near future, and, therefore, requests the additional three months. This is not a situation in which Timberpeg has sat idle, and made no efforts to effect service during its 120 day period.

14. Given the early stage of these proceedings, the relief requested herein will not require the continuance or rescheduling of any trial or other proceedings scheduled in this action nor will the relief prejudice co-defendant Vermont Timberworks in any way. In that regard, Timberpeg and VTW have conferred, agreed upon and submitted a Rule 16 scheduling order for the litigation. Isbitski is neither a necessary party to proof of any of the claims against or asserted by Timberpeg or VTW, nor will additional time to serve Isbitski prejudice VTW in any way, such as, for example, by delaying the commencement of discovery or otherwise delaying the proceedings.

15. Counsel for VTW has been contacted and does not assent to the relief requested herein.

16. In light of the authority and argument cited herein, no accompanying memorandum of law is necessary. See LR 7.2.

WHEREFORE, Timberpeg respectfully requests that this court:

A. Extend the time in which Timberpeg may serve process on Isbitski by three additional months until May 20, 2004; and

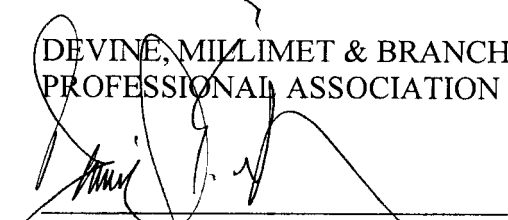
B. Grant such other and further relief as this court deems just, equitable, and proper.

Respectfully submitted,

T-PEG, INC. AND TIMBERPEG EAST, INC.

By their attorneys,

DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION



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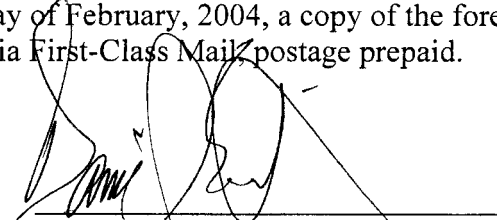
Dated: February 16, 2004

Of Counsel:

Stephen S. Woods, Esquire (#8240)
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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2004, a copy of the foregoing was forwarded to W.E. Whittington, Esquire via First-Class Mail postage prepaid.



Daniel E. Will (#12176)

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