

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:09-CV-00636-REB-KLM

VIDEO PROFESSOR, INC.
Plaintiff,

v.

AMAZON.COM, INC.
Defendant.

**RESPONSE TO PLAINTIFF'S FIRST MOTION FOR EXTENSION OF TIME TO
RESPOND TO DEFENDANT'S SUMMARY JUDGMENT MOTION
[Docket No. 37, filed November 18, 2009]**

Defendant Amazon.com, Inc. ("Amazon") hereby submits its Response to Plaintiff's First Motion for Extension of Time to Respond to Defendant's Summary Judgment Motion ("Motion"), Docket No. 37, filed November 18, 2009. Plaintiff's Motion should be denied because Plaintiff's request for an extension of time is untimely, and because Plaintiff fails to support its request with a particularized showing of good cause.

The procedures for seeking relief pursuant to Fed. R. Civ. P. 56 are governed by D.C.COLO.LCivR 56.1, not D.C.COLO.LCivR 7.1C. See Judge Robert E. Blackburn Practice Standards - Civil Actions (hereinafter "Practice Standards"), at V.I.2. D.C.COLO.LCivR 56.1 states that "A response brief [to a motion under Fed. R. Civ. P. 56] shall be filed within 20 days after the date of filing of the motion, or such other time as the Court may order."

Amazon filed its motion for summary judgment on October 27, 2009. (Docket No. 30). Accordingly, Plaintiff's response was due on November 16, 2009, or 20 days after October 27, 2009.

Plaintiff's position that it is entitled to an additional 3 days because Amazon served its summary judgment motion through the Court's electronic filing system is incorrect. Because D.C.COLO.LCivR 56.1 requires responses to be filed within 20 days after filings, and not service, the "additional 3 days" provision of Fed. R. Civ. P. 6(d) and 5(b)(2)(E) does not apply. Thus, as of November 17, Plaintiff's response was untimely.

However, regardless whether Plaintiff's response was due on November 16 or on November 19, as Plaintiff maintains, Plaintiff's Motion should be denied because it is untimely under this Court's Practice Standards. The Court's Practice Standards state that "Any motion for extension of time shall be filed no later than **three (3)** business days prior to the date of the motion, response, reply, or other paper to which the extension applies is due." Practice Standards, at II.G.2 (emphasis in original). Plaintiff filed its Motion requesting an extension of time after the deadline for filing its response to Amazon's summary judgment motion. However, even if Plaintiff's response was not due until November 19, as Plaintiff maintains, its Motion is still tardy. Under that assumption, Plaintiff was required to file its Motion not later than November 16.

In addition, under the Court's Practice Standards, a motion for extension of time requires a showing of "good cause, which must be established with particularity." Practice Standards, at II.G.1. Plaintiff fails to support its request for an extension of time with a particularized showing of good cause.

WHEREFORE, because Plaintiff's request for an extension of time is untimely, and because Plaintiff failed to support its request with a particularized showing of good cause, Amazon respectfully requests that Plaintiff's Motion be denied.

Respectfully submitted this 19th day of November 2009.

s/ Marc C. Levy

Marc C. Levy
Jared B. Briant
FAEGRE & BENSON LLP
1700 Lincoln Street, Suite 3200
Denver, Colorado 80203
Phone: (303) 607-3500
Fax: (303) 607-3600

Attorneys for Defendant Amazon.com, Inc.

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on November 19, 2009, I electronically filed the foregoing **RESPONSE TO PLAINTIFF'S FIRST MOTION FOR EXTENSION OF TIME TO RESPOND TO DEFENDANT'S SUMMARY JUDGMENT MOTION [Docket No. 37, filed November 18, 2009]** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following persons at the given email addresses:

Gregory C. Smith
Fairfield & Woods, P.C.
1700 Lincoln Street
Wells Fargo Center #2400
Denver, CO 80203
Email: gsmith@fwlaw.com

/s/ Marc C. Levy
Marc C. Levy