

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-20427-CV-WILLIAMS

DISNEY ENTERPRISES, INC., *et al.*,

Plaintiffs,

vs.

HOTFILE CORP., *et al.*,

Defendants.

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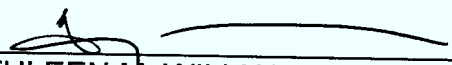
**ORDER ON MOTION FOR EXTENSION OF TIME**

**THIS MATTER** is before the Court on Defendant Hotfile Corporation's Motion for Two-Day Enlargement of Time to Amend Counterclaim (DE 158). On October 4, 2011, on stipulation of the parties, the Court ordered Hotfile to file a second amended answer incorporating a revised counterclaim "no later than fourteen days after the completion of the first day of Hotfile's 30(b)(6) deposition of Plaintiff and Counterdefendant Warner Bros. Entertainment." (DE 155.) At 5:44 P.M. on the day Hotfile's amended answer and counterclaim was due, it filed the instant motion seeking a two-day extension of its time to file, citing the recent production of data by Warner Brothers. Warner Brothers filed an opposition shortly before midnight that opposed the extension, stating that Hotfile knew of the data for a month, that the deadline was the result of a "heavily negotiated bargain" between the parties, and that by filing the motion immediately before it was due, Hotfile intended to deprive the Court of an opportunity to hear its motion.

The Court agrees with Warner Bros. to the extent that Hotfile could have foreseen the need for an extension on October 20, 2011 or October 21, 2011, when it received the additional information from Warner Bros, and that it was imprudent for Hotfile to wait. However, denying Hotfile any additional time would effectively bar it from filing a counterclaim, which runs counter to this Circuit's strong preference that "cases be heard on the merits rather than resorting to sanctions that deprive a litigant of his day in court." *Wahl v. McIver*, 773 F.2d 1169, 1174 (11th Cir. 1985). A brief extension is therefore warranted. Additionally, the Court encourages the parties to work to resolve similar motions to avoid the Court using its own time unnecessarily. See S.D. Fla. L.R. 11.1.C (incorporating the Rules Regulating The Florida Bar into Local Rules); Preamble, Guidelines for Professional Conduct, Florida Bar Rules (noting that attorneys have a "duty of courtesy and cooperation with fellow professionals for the efficient administration of our system of justice and the respect of the public it serves").

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Defendant's motion is **GRANTED IN PART**. Defendant Hotfile shall file its amended answer and counterclaim required by the Court's October 4, 2011 (DE 155) on or before October 27, 2011. No further extensions will be granted.

**DONE AND ORDERED** in chambers in Miami, Florida, this 27th day of October, 2011.

  
KATHLEEN M. WILLIAMS  
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record