

Before the
FEDERAL MARITIME COMMISSION

Washington, D.C. 20573

Docket No. 23-10

BED BATH & BEYOND INC. v.
YANG MING MARINE TRANSPORT CORP.

JOINT MOTION TO EXTEND DEADLINES

Complainant 20230930-DK-Butterfly-1, Inc., formerly known as Bed Bath & Beyond Inc.¹ (“BBBY”) and Respondent Yang Ming Marine Transport Corp. (“Yang Ming”) (BBBY, collectively with Yang Ming, the “Parties”), by their respective undersigned counsel, and, pursuant to 46 C.F.R. Sections 502.69 and 502.102, hereby file this Joint Motion to Extend Deadlines (“Motion”) and in support thereof state that good cause for the requested extension exists, as follows:

1. The Parties are mindful of the Presiding Officer’s April 16, 2024 Second Amended Scheduling Order.
2. As indicated in the Parties’ March 21, 2024 Joint Motion to Extend Deadlines, Complainant completed its production of relevant documents and communications to Respondent as of March 4, 2024 (the originally ordered close of discovery) and served its privilege log on March 11, 2024.

¹ Bed Bath & Beyond Inc. filed a change of name certificate with the New York State Division of Corporations, State Records, and Uniform Commercial Code on September 21, 2023 by and through which Bed Bath & Beyond Inc. changed its corporate name to 20230930-DK-Butterfly-1, Inc.

3. As further set forth in the Parties' March 21, 2024 Joint Motion to Extend Deadlines, Respondent anticipated as of that date that Respondent would be able to complete its production of relevant documents and communications by March 21, 2024. Respondent made additional productions of "native" files (i.e., documents in their original file formats, without associated production images, Bates numbers, or confidentiality stamps) on March 21, March 22, March 23, and April 9, 2024.

4. On April 10, 2024, counsel for Complainant inquired when Respondent would be able to produce relevant documents and communications as agreed in the Parties' jointly submitted ESI Protocol (i.e., Bates- and confidentiality-stamped production images or, with respect to Microsoft Excel files, associated Bates- and confidentiality-stamped slip sheets). Respondent confirmed that it was working with its ediscovery vendor to produce relevant documents and communications in a manner consistent with the joint ESI Protocol.

5. The Parties both agree that conducting depositions and preparing expert reports without having Bates- and confidentiality-stamped production documents to use would prevent the Parties from efficiently and effectively reviewing, identifying, and categorizing discovery material in preparing for and taking fact depositions and developing expert evidence, and would inhibit preparing and submitting the Parties' written briefs to the Presiding Officer. Further, the numbering system used in Respondent's previously produced "native" production—with each *document* numbered in sequential order, without regard to the number of *pages* within that document—will not correspond with the sequential Bates numbers that Respondent is currently in the process of providing for its document productions.

6. The ediscovery vendors for each Party have been working to process the large amounts of data produced by Respondent and implement a series of technical "overlay" files to

replace and associate the previously-produced native documents with the appropriately Bates-numbered and confidentiality-stamped production documents—which are the documents that the Parties will actually be using in depositions, expert analysis, and briefing.

7. Respondent has made rolling partial overlay productions for its relevant documents and communications on April 18, April 22, April 23, April 25, May 9, and May 16, 2024.

Present Technical Delays

8. Complainant’s ediscovery vendor has reported that the overlay productions are taking significant time to implement due to the large size of the files (hundreds of gigabytes), “time out” and other errors, and download problems. Complainant’s ediscovery vendor has had personnel working on the weekends to address errors and has shifted network and computer resources to this proceeding in order to address the technical issues involved in implementing such files. Additionally, Complainant’s ediscovery vendor has worked diligently to sample and institute quality control measures to ensure that the overlay files properly match up with the original native productions, to transfer slipsheet images to appropriate production images, and to overlay the newly received data to the previously produced native files.

9. Respondent’s ediscovery vendor has also indicated that the overlay productions resulted in unexpected technical difficulties. Respondent currently estimates that it will be able to complete its overlay productions by **June 1, 2024**. There are two major causes contributing to the extended timeframe for completing this work.

Cause #1 - Quantity of documents

- We have 310,828 documents to convert to images. The sheer number of documents requires extended machine time for the conversion.
- Roughly 1.4 million pages have been generated from the 310,828 documents after image conversion. The high number of pages necessitates extended machine time to endorse each page with bates numbers and confidentiality designations.

- There were additional problems with initially gathering all the information from a variety of custodians located both in the US and Taiwan, including copying phones and laptops in addition to the company files maintained.

Cause #2 – Technical issues encountered during image conversion

- We encountered technical issues during image conversion, such as:
 - Character code issues in the native documents causing the tiffed image to show garbled text.
 - Email file format inconsistencies between US mail server, Taiwan mail server and custodian’s PC requiring optimization of tiff settings to avoid issues such as table cutoffs or garbled text.
- While we have been able to find solutions to the issues encountered, manually identifying affected documents is time-consuming. Initially the native production was provided as the only viable way of producing the material in the original time frame available. Then conversion from native to bated stamped production which entailed more time and various technical problems. The work has been constant and all within the maximum machine and individual capacities available.

Joint Request for Additional Time

10. Due to the anticipated June 1, 2024 completion of Respondent’s production, and based on the foregoing technical issues, against which the Parties’ discovery vendors have worked individually and together in order to minimize delays and load data in the most expeditious means possible, and so that the parties can access and use Respondent’s relevant documents and communications in depositions, expert analysis, and briefing, the Parties jointly seek the following extension of time, which is consistent with the anticipated (approximate) 45-day technical delay in completing production of Respondent’s documents from April 15 to June 1, and which extends the below previously ordered deadlines by the same 45-day window:

- July 30, 2024 Parties complete depositions of fact witnesses.
- July 30, 2024 Last day to serve interrogatories, requests for admission, and RFPs.
- August 13, 2024 Disclosure of Complainant’s initial expert reports, if any.
- August 13, 2024 Disclosure of Respondent’s initial expert reports, if any.
- October 3, 2024 Disclosure of Respondent’s rebuttal expert reports, if any.
- October 3, 2024 Disclosure of Complainant’s rebuttal expert reports, if any.
- October 30, 2024 Complete expert depositions.
- October 30, 2024 Close of discovery.

11. In making this joint Motion, the Parties here have limited their request to the smallest amount of time in which they believe they can feasibly conduct discovery in this large, complex litigation, with the understanding that they will also continue to work to stipulate to facts, limit depositions, and expeditiously resolve discovery disputes and produce documents promptly and to the extent possible.

12. The Parties do not anticipate any further requests for additional time, and will work to limit such extension requests, including by working to facilitate consent for email service of subpoenas and provision of contact information, where available.

13. Rule 102(a) of the Federal Maritime Commission's Rules of Practice and Procedure, 46 C.F.R. Section 502.102(a), provides in relevant part: "Motions for enlargement or reduction of time for the filing of any pleading or other document, or in connection with the procedures of subpart L of this part, may be granted upon a showing of good cause."

14. The Parties' diligent efforts regarding production and working collaboratively with their respective ediscovery vendors, as well as the volume of production material, which includes multiple hundreds of thousands of documents and terabytes of data, merits the extension requested, and granting this request will prevent prejudice to either Party in requiring the parties to conduct discovery without documents produced pursuant to the ESI Protocol.

15. The Parties have brought this matter to the attention of the Presiding Officer well in advance of the present deadline to complete depositions, as the delays outlined herein are of a technical nature that the parties have been actively seeking to address.

16. Pursuant to 46 C.F.R. § 502.71(a), counsel for Complainant and counsel for Respondent have discussed this Motion with each other in a good faith effort to determine whether

there is any opposition to the relief sought and, if there is opposition, to narrow the areas of disagreement. The Parties each agree to the relief requested in this Motion.

WHEREFORE, Complainant 20230930-DK-Butterfly-1, Inc. and Respondent Yang Ming Marine Transport Corp. pray that their Joint Motion to Extend Deadlines be granted.

Dated: May 20, 2024

Respectfully submitted,

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Certificate of Service

I hereby certify that I have this day served the foregoing document upon Complainant 20230930-DK-Butterfly-1, Inc., formerly known as Bed Bath & Beyond Inc., by emailing a copy of the document to its counsel of record listed below:

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Dated: May 20, 2024

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