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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91171281
Party	Defendant Jarrow Formulas, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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PomWonderful LLC Opposer, v. Jarrow Formulas, Inc., Applicant.	Opposition (Parent) No.: 91171281 **JOINT MOTION FOR AN EXTENSION OF TIME AND STATUS REPORT** Marks and Related (Consolidated) Proceedings: Opp. No. 91171281 (Parent) re POMAMAZING Opp. No. 91191283 re POMEGREAT Opp. No. 91171284 re POMESYNERGY Opp. No. 91173117 re POMOPTIMIZER Opp. No. 91173118 re POMGUARD Opp. No. 91186414 re POMEZOTIC Opp. No. 91191995 re PRICKLYPOM Opp. No. 91194226 re POM and POM

Pursuant to TBMP § 509.01(a), Opposer PomWonderful LLC ("POM") and Applicant Jarrow Formulas, Inc. ("JFI") (collectively, the "Parties") jointly move the Board for an extension of time to conduct discovery according to the schedule proposed in Section II, *infra*. As the Board is well aware, the Parties have been diligently trying to resolve this case without further Board involvement and have previously requested multiple extensions and suspensions to that end. Although the issues in this case are complicated by the number of marks, the uses of the marks, parallel proceedings in Canada, and both U.S. and foreign counsel involvement, until very recently the Parties were exchanging written, lengthy settlement drafts and on the verge of fully resolving this matter. However, due to a significant change of circumstances which, from POM's perspective, has essentially thwarted the settlement process, the parties are now compelled to conduct discovery in order to preserve their rights. Thus, this extension of time and proposed schedule is requested for the purposes of allowing the Parties adequate time to

complete discovery and position themselves for trial, now that settlement negotiations are at an impasse.

In compliance with the Board's Orders of February 22, 2011 and March 14, 2012, the parties hereby advise the Board as follows.

I. STATUS OF SETTLEMENT NEGOTIATIONS AND DISCOVERY ACTIVITY

On May 8, 2012, counsel for JFI provided counsel for POM with a redline draft of the settlement agreement containing JFI's proposed revisions.

On May 17, 2012, Chief Administrative Law Judge D. Michael Chappell issued an Initial Order in a Federal Trade Commission ("FTC") proceeding involving POM. Initial Decision & Order, *In re POM Wonderful LLC*, No. 9344 (FTC May 17, 2012) (the "FTC Initial Order") (both POM and the FTC are currently appealing aspects of the FTC Initial Order). While the Parties are not at liberty to discuss details of the confidential settlement negotiations and draft agreement, from POM's perspective, the FTC Initial Order severely impacted the Parties' negotiated resolution of this matter. After analyzing the meaning of the over 300 page FTC Initial Order, POM determined that the settlement being negotiated was no longer tenable and communicated this to JFI. As a result, the Parties are now faced with needing to complete discovery and prepare for trial.

On August 1, 2012, the Parties' counsel discussed the FTC Initial Order by telephone, their views of its effect on settlement, the possibility of continuing negotiations on some issues, and a plan for completing discovery and preparing for trial. Each party subsequently noticed the deposition of each other's Rule 30(b)(6) witness to take place on the August 24, 2012 – marking the resumption of proceedings and the last day of the discovery period under the operative trial calendar.

Given the limited amount of time and the number of outstanding discovery issues -- which include finalizing an alternate protective order, supplementing written discovery responses and document production, and conducting discovery depositions -- in email correspondence dated August 8th and 13th, the Parties' counsel discussed and agreed to postpone the August 24th depositions and jointly request that remaining discovery and trial dates be reset. Although the Parties remain hopeful that at least some issues may be able to be resolved through settlement, the Parties recognize that because POM no longer believes the current draft of the agreement to be tenable, the Parties must now conduct discovery in preparation for a trial on the merits.

II. JOINT MOTION FOR AN EXTENSION OF TIME

In light of the recent developments explained above, the Parties propose resetting remaining discovery and trial dates as follows. This proposed schedule accounts for the fact that the Parties have thus far, in good faith, deferred all discovery activity to allow everyone involved, counsel and Parties, to focus their efforts on settlement negotiations. The Parties therefore respectfully request that the Board order the following schedule, which sets forth additional deadlines stipulated to by the parties:

Parties to file alternate protective order with Board	9/17/12
Parties to respond to outstanding discovery requests and to produce documents	10/23/12
Parties to make witnesses available for initial deposition (follow-up discovery may take place in following month)	11/22/12 – 12/22/12
Expert disclosures due	12/22/12
Discovery closes	1/21/13
Plaintiff's pretrial disclosures due	3/7/13
Thirty-day testimony period for party in	

position of plaintiff to close:	4/21/13
Defendant's pretrial disclosures due	6/5/13
Thirty-day testimony period for party in position of defendant to close:	6/20/13
Fifteen-day rebuttal testimony period to close:	8/4/13

Trial briefs shall be filed in accordance with 37 C.F.R. § 2.128. The above request is made in good faith, and not for the purpose of unduly delaying proceedings.

Respectfully submitted,

/s/ Mark D. Giarratana

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Dated: August 23, 2012

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Dated: August 23, 2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 23, 2012, the foregoing document was submitted for filing to the Trademark Trial and Appeal Board through the ESTTA system and a copy of this paper has been served upon all parties by email, per the parties' prior agreement, at the address shown below:

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