

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

vw

Mailed: May 5, 2009

Opposition Nos. 91184700
91184702
91184703

NBTY, Inc.

v.

Phyto Tech Corp.

Frances S. Wolfson, Interlocutory Attorney:

Opposer's consented motion (filed March 17, 2009) to suspend proceedings to allow the parties to complete a proposed Settlement and Coexistence Agreement prior to advising the Board whether it wishes to withdraw the opposition in light of the amendments made to applicant's marks is granted.¹

Accordingly, proceedings herein are suspended until June 1, 2009, subject to the right of either party to request resumption at any time. See Trademark Rule 2.117(c).

¹The Board notes that opposer's motion does not indicate proof of service upon applicant as required by Trademark Rule 2.119. In order to expedite matters, a copy of opposer's motion is forwarded to applicant with its copy of the instant order, but strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

In the event that there is no word from either party concerning the progress of their negotiations, upon conclusion of the suspension period, proceedings shall resume on **June 2, 2009** without further notice or order from the Board, upon the schedule set out below. Further requests for extensions or suspension must be accompanied by a written report on the progress of their settlement talks, to establish good cause therefor.

This report must include: a recitation of issues that have been resolved, issues that remain to be resolved, and a FIRM timetable for resolution. Absent such a report, any future motion to extend or suspend may not be approved, even though agreed to by the parties.

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| Expert Disclosures Due | 7/19/09 |
| Discovery Closes | 8/18/09 |
| Plaintiff's Pretrial Disclosures Due | 10/2/09 |
| Plaintiff's 30-day Trial Period Ends | 11/16/09 |
| Defendant's Pretrial Disclosures Due | 12/1/09 |
| Defendant's 30-day Trial Period Ends | 1/15/10 |
| Plaintiff's Rebuttal Disclosures Due | 1/30/10 |
| Plaintiff's 15-day Rebuttal Period Ends | 3/1/10 |

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

If, during the suspension period, either of the parties or their attorneys should have a change of address, the Board should be so informed.