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

Mailed: September 19, 2008

Opposition No. **91184700**
Opposition No. **91184702**
Opposition No. **91184703**[1]

NBTY, Inc.

v.

Phyto Tech Corp.

Frances S. Wolfson, Interlocutory Attorney:

On September 15, 2008, the Board convened a telephone conference with Nathan Lowery, Esq., representing applicant, and Scott Fisher, Esq., representing opposer, to discuss the proposed amendment to the mark filed by applicant in this

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[1] When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. Such consolidation may be ordered on the Board's own initiative. See Fed. R. Civ. P. 42(a); and TBMP § 511 (2d ed. rev. 2004). These cases involve the same parties and marks. Accordingly, these cases are hereby consolidated.

The cases may now be presented on the same records and briefs. Papers should bear the number of each of the consolidated cases, although Opposition No. 91184700 is treated as the "parent" case, and most of the papers filed by the parties, or issued by the Board, will be placed only in the file of the parent case. The parties need not file a copy for each consolidated case; a single copy, bearing the number of each consolidated case, normally is sufficient.

Consolidated cases do not lose their separate identity because of consolidation. Each proceeding retains its separate character and requires entry of a separate judgment. See Wright & Miller, Federal Practice and Procedure: Civil §2382 (1971).

case on July 17, 2008.[2] Applicant proposes to amend the mark from GOOD 'N SWEET to GOOD & SWEET.

Mr. Fisher advised the Board that opposer had not yet agreed to consent to the proposed amendment but that it was expected that opposer would agree to the amendment and that the parties would shortly file a stipulated motion to amend the mark together with opposer's withdrawal of the opposition contingent on the Board's acceptance of the amendment.

In view thereof, the Board, after confirming that the parties had held their discovery conference, granted a three-month suspension of proceedings.

Accordingly, proceedings are hereby suspended until December 20, 2008, following which proceedings will resume without further notice or order from the Board upon the schedule set out below.

Discovery Opens	**12/21/08**
Initial Disclosures Due	**1/20/09**
Expert Disclosures Due	**5/20/09**
Discovery Closes	**6/19/09**
Plaintiff's Pretrial Disclosures	**8/3/09**
Plaintiff's 30-day Trial Period Ends	**9/17/09**
Defendant's Pretrial Disclosures	**10/2/09**
Defendant's 30-day Trial Period Ends	**11/16/09**

[2] It is noted that applicant filed the proposed amendment using TEAS, the electronic filing system used by the Trademark Operations branch of the USPTO. The better practice is to have filed the amendment via ESTTA, the Board's electronic system. Trademark Rule 2.133(a); see generally, TBMP §§ 514, *et seq.* (2d ed. rev. 2004).

Plaintiff's Rebuttal Disclosures	**12/1/09**
Plaintiff's 15-day Rebuttal Period Ends	**12/31/09**

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.