

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

mc

Mailed: April 30, 2009

Opposition No. 91188399

PEPSICO, INC.

v.

kaneta-ogata, bryce

Millicent Canady, Paralegal

Opposer's consented motion filed April 7, 2009 to extend trial dates, including the deadline for discovery conference are noted.

Opposer seeks, with an allegation of applicant's consent, time for the parties to negotiate settlement. The parties are reminded that the trademark rules place on the parties a shared responsibility to conference to discuss the scope of the pleadings, the possibility of settlement and planning for disclosures and discovery, as explained in the notice of institution. The Board does not find in opposer's motion good cause to delay the parties' required conference to allow for settlement talks when the parties are required to discuss settlement in the conference. See "Miscellaneous Changes to Trademark Trial

and Appeal Board Rules," 72 Fed. Reg. 42242, 42245 (Aug. 1, 2007) (emphasis added):

if a motion to extend or suspend for settlement talks, arbitration or mediation is not filed prior to answer, then the parties will have to proceed, after the answer is filed, to their discovery conference, one point of which is to discuss settlement. It is unlikely the Board will find good cause for a motion to extend or suspend for settlement if the motion is filed after answer but prior to the discovery conference, precisely because the discovery conference itself provides an opportunity to discuss settlement.

Inasmuch as the circumstances recited in the suspension requests are not deemed to be extraordinary in nature, the request is denied. Nonetheless, because the parties may not, under the applicable rules, engage in discovery activities without first making the required initial disclosures, the deadline for making such disclosures and all subsequent dates are hereby reset as follows:

Discovery Opens	7/29/2009
Initial Disclosures Due	8/28/2009
Expert Disclosures Due	12/26/2009
Discovery Closes	1/25/2010
Plaintiff's Pretrial Disclosures	3/11/2010
Plaintiff's 30-day Trial Period Ends	4/25/2010
Defendant's Pretrial Disclosures	5/10/2010
Defendant's 30-day Trial Period Ends	6/24/2010
Plaintiff's Rebuttal Disclosures	7/9/2010
Plaintiff's 15-day Rebuttal Period Ends	8/8/2010

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>