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Filing date: **09/19/2011**

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

Proceeding	91194188
Party	Defendant Sprinkles Cupcakes, Inc.
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Signature	/John L. Slafsky/
Date	09/19/2011
Attachments	Request for Telephonic Conference.pdf (4 pages)(218051 bytes)

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

)	Opposition No. 91194188 (Parent)
)	Opposition No. 91195669
SOFT SERVE, INC. d/b/a SPRINKLES,)	Opposition No. 91195985
)	Opposition No. 91195986
Opposer/Plaintiff,)	Opposition No. 91196035
)	Opposition No. 91196061
v.)	Opposition No. 91196087
)	Cancellation No. 92053109
SPRINKLES CUPCAKES, INC.,)	
)	
Applicant/Defendant.)	
_____)	

REQUEST FOR TELEPHONIC CONFERENCE

Pursuant to Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) §§ 413 and 502.06, Applicant/Defendant Sprinkles Cupcakes, Inc. (Sprinkles”), by and through its undersigned counsel, hereby requests a telephonic conference with the Board’s Interlocutory Attorney in order to confirm that Sprinkles’ deadline for filing papers in opposition to the Motion for Summary Judgment served by Opposer Soft Serve, Inc. d/b/a/ Sprinkles (“Soft Serve”) is suspended while the pending Rule 56(d) motion is under consideration by the Board.

Sprinkles’ opposition to the Motion for Summary Judgment is presently due by September 29, 2011, per the Board’s order dated September 8, 2011. Sprinkles has, in response to the Summary Judgment Motion, already filed a motion pursuant to Fed. R. Civ. P. 56(d) in which it seeks, among other things, a continuance of the September 29 opposition deadline. However, the Board is unlikely to rule on Sprinkles’ Rule 56(d) motion before September 29.

Courts customarily rule on Rule 56(d) motions before addressing the underlying summary judgment motion. *See, Doe v. Abington Friends School*, 480 F.3d 252, 257 (3d Cir. 2007) (“whatever its decision, it is improper for a district court to rule on summary judgment without first ruling on a pending Rule 56[(d)] motion”) (citation omitted). The Board should act no differently in this matter. Good cause has been set forth in Sprinkles’ Rule 56(d) motion papers for a continuance, and moreover, it would be burdensome and inefficient for the parties and the Board to address the Summary Judgment Motion twice: at this time and again at a later date.

Accordingly, under these circumstances, and for the reasons set forth in detail in the Rule 56(d) motion, Sprinkles respectfully requests a telephone conference with the Interlocutory Attorney confirming that Sprinkles’ deadline for filing papers in opposition to the Summary Judgment Motion has been suspended while the Rule 56(d) motion is pending.

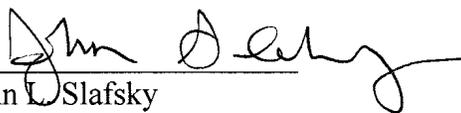
Soft Serve, according to an e-mail from its counsel dated September 19, 2011, “has no objection to the entry of an Order suspending the deadline for Applicant to file its brief in response to Opposer’s motion for summary judgment while Applicant’s Rule 56(d) motion is under consideration.”

Dated: September 19, 2011

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI

By:



John L. Slafsky
Hollis Beth Hire

Attorneys for Applicant
SPRINKLES CUPCAKES, INC.

Please address all communications concerning this proceeding to:

John L. Slafsky
Hollis Beth Hire

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CERTIFICATE OF SERVICE BY MAIL

I, Elvira Minjarez, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

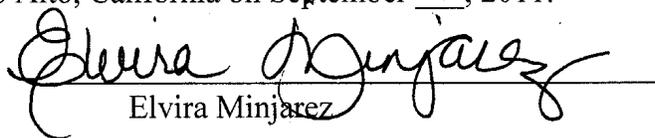
On this date, I served:

REQUEST FOR TELEPHONIC CONFERENCE

on each person listed below, by placing the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Thomas J. Vande Sande
Hall & Vande Sande, LLC
10220 River Road, Suite 200
Potomac, Maryland 20854

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on September 19, 2011.


Elvira Minjarez