

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

vb/jk

Mailed: January 21, 2012

Opposition No. 91195820

Kraft Foods Schweiz Holding
GmbH

v.

Nexus Foods, Inc.

By the Board:

Applicant's response, filed December 19, 2011, to the Board's November 22, 2011 notice of default and show cause order is noted.

For clarification, the Board's November 22, 2011 notice of default and show cause order issued pursuant to Fed. R. Civ. P. 55(a) for applicant's failure to file an answer to the notice of opposition by the date established in the parties' September 15, 2011 motion, namely, November 15, 2011.

In its response, applicant states, inter alia, that opposer "provided consent for" the proposed amendment in September 2011, that the parties negotiated and approved a settlement agreement, that opposer has indicated to applicant its desire to end the proceeding according to the settlement agreement, and that the failure to indicate opposer's consent was due to an inadvertent oversight by applicant's counsel who

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has been undergoing medical treatment. Based on these assertions, applicant requests that the Board set aside its default in accordance with Fed. R. Civ. P. 55(c).

Given the substance of applicant's response and the Board's construction of it, as noted below, applicant's default is hereby set aside.

As noted, Trademark Rule 2.133(a) requires the consent of the other party or parties before an amendment to an opposed application can be approved. To the extent that applicant addresses opposer's consent by way of asserting that the parties have entered into a settlement agreement and that the proposed amendment is a term of said agreement, the Board construes applicant's response as an assertion of opposer's consent to the proposed amendment.

In view thereof, inasmuch as the amendment to the identification of goods is clearly limiting in nature as required by Trademark Rule 2.71(a), and because opposer consents thereto, it is approved and entered. See Trademark Rule 2.133(a).

If this resolves the dispute herein, **opposer is allowed until thirty days from the mailing date of this order to file a withdrawal of the opposition, failing which the opposition will go forward on the application as amended.** See Trademark Rule 2.106(c).

Proceedings are otherwise suspended.