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

Proceeding	91195823
Party	Plaintiff OMS Investments, Inc.
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Attachments	Motion to Suspend Opposition Including Discovery-NCA.pdf (5 pages)(137692 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No.: 77/853,842
For the mark: CHAMPIONGRO
Published: March 30, 2010

OMS Investments, Inc.,	)	
	)	Opposition No. 91195823
Opposer,	)	
	)	**MOTION TO SUSPEND**
v.	)	**OPPOSITION INCLUDING**
	)	**DISCOVERY**
NCA Biotech, Inc.,	)	
	)	
Applicant.	)	
	)	

Pursuant to Rule 2.117(c) of the Trademark Rules of Practice, 37 C.F.R. § 2.117(c), and for the reasons set forth in the accompanying brief, Opposer OMS Investments, Inc. ("OMS") requests that the Trademark Trial and Appeal Board suspend the above-referenced opposition proceeding, including all discovery matters, pending disposition of the Motion for Summary Judgment that OMS filed on May 13, 2011. OMS further requests that the Board reset the dates for trial if the opposition proceeding is resumed after the suspension period. Applicant NCA Biotech, Inc. ("NCA") has received this motion, and its counsel has indicated by voice mail that it does not object to the filing of this motion.

BRIEF IN SUPPORT OF OPPOSER'S MOTION TO SUSPEND OPPOSITION PROCEEDINGS INCLUDING DISCOVERY

I. PROCEDURAL HISTORY

OMS filed its initial Notice of Opposition in this matter on July 28, 2010. OMS and NCA then began trying to settle the dispute. As a result, on December 3, 2010, OMS filed a consented motion to suspend, which the Board granted. OMS takes the position that the parties did settle their dispute during this suspension, while NCA now takes the position that they did not. The suspension period ended on March 3, 2011. Since then, each party has served discovery requests on the other party. On May 13, 2011, OMS filed a motion for summary judgment, which could be dispositive of the opposition in its entirety. OMS therefore requests a suspension of the opposition pending disposition of its summary judgment motion -- under Trademark Rule 2.127(d) -- including a suspension of discovery and the parties' time to respond to discovery requests -- under TBMP 510.03(a). NCA has indicated by voice mail from its counsel that it does not oppose OMS's request.

II. PROCEEDINGS SHOULD BE SUSPENDED IN LIGHT OF THE PENDING SUMMARY JUDGMENT MOTION

When a party to an opposition proceeding files a potentially dispositive motion, like OMS's summary judgment motion, the Board generally suspends the opposition with respect to all matters not germane to the motion. *See* 37 C.F.R. § 2.127(d) ("When any party files . . . a motion for summary judgment, or any other motion which is potentially dispositive of a proceeding, the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion and no party should file any paper which is not germane to the motion except as otherwise specified in the Board's suspension order."); *see also Super Bakery, Inc. v. Benedict*, 96 U.S.P.Q.2d 1134, 1134 (T.T.A.B. 2010) (opposition suspended pending determination of summary judgment motion). This suspension can include the

suspension of discovery matters, including responses to outstanding discovery requests. *See Leeds Technologies Ltd. v. Topaz Communications Ltd.*, 65 U.S.P.Q.2d 1303 (T.T.A.B. 2002) (times to respond to discovery responses reset following decision on potentially dispositive motion for judgment on pleadings). The Board should follow its practice of suspending this opposition, including discovery matters, pending the determination of OMS's summary judgment motion, as this will promote judicial economy and will save the parties from expending time and resources in potentially unnecessary motions and discovery.

III. SUSPENDING THE PROCEEDINGS WILL NOT PREJUDICE ANY PARTY

Suspending the opposition will not prejudice any party as demonstrated by the fact that NCA appears to consent to this motion for suspension. Specifically, on May 18, 2011, counsel for OMS e-mailed a copy of this motion to counsel for NCA. And on May 22, 2011 NCA's counsel advised by voicemail "if you just file it, go ahead and do it, that's fine." Moreover, a suspension will save both parties from expending time and resources in a manner that may ultimately be unnecessary. And if the opposition is resumed after determination of OMS's summary judgment motion, then each party will be able to proceed without prejudice provided that the Board resets the dates for trial as requested.

Dated: May 23, 2011 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION TO SUSPEND OPPOSITION INCLUDING DISCOVERY** has been properly served, via first class mail and e-mail, this 23rd day of May, 2011, at the following addresses:

Stanley T. Hsiao, Esq.
NCA Biotech, Inc.
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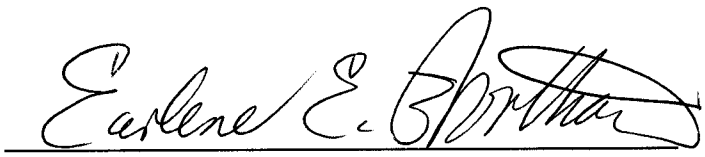

Earlene E. Wortham