

ESTTA Tracking number: **ESTTA592612**

Filing date: **03/14/2014**

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

Proceeding	91201238
Party	Plaintiff Neways, Inc.
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Submission	Motion to Suspend for Settlement Discussions
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Date	03/14/2014
Attachments	Motion for Suspension for Settlement with Consent.pdf(230984 bytes )

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

In the matter of Trademark Application Serial No. 85/74256  
Published in the Official Gazette of April 19, 2011, Int'l Class 5  
Filed: November 11, 2010  
Mark: NEW WHEY

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NEWAYS, INC.	)	Opposition No. 91201238
	)	
Opposer,	)	
v.	)	
NEW WHEY NUTRITION, LLC	)	
	)	
Applicant.	)	

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Motion for Suspension for Further Settlement With Consent  
(With Supplemental Report Regarding Settlement Negotiations Incorporated)

The parties are actively engaged in settlement efforts with respect to these proceedings, as shown by the report regarding settlement negotiations incorporated into this motion below. The parties presently believe that a settlement of the opposition is possible if the parties have additional time to complete those negotiations. The parties have agreed and Neways hereby requests, that these proceedings be suspended until April 15, 2014, an additional 30 days to allow the parties to continue their settlement efforts. It is further requested that all discovery and trial dates be extended thirty (30) days and reset accordingly:

Time to Answer	Closed
Deadline for Discovery Conference	Closed
Discovery Opens	Closed

Initial Disclosures Due	Closed
Expert Disclosures Due	04/14/2014
Plaintiff's Notice on Whether Amendment of Answer is Contested	04/17/2014
Discovery Closes	05/14/2014
Plaintiff's Pretrial Disclosures	06/28/2014
Plaintiff's 30-day Trial Period Ends	08/12/2014
Defendant's Pretrial Disclosures	08/27/2014
Defendant's 30-day Trial Period Ends	10/11/2014
Plaintiff's Rebuttal Disclosures	10/26/2014
Plaintiff's 15-day Rebuttal Period Ends	11/25/2014

### Report Regarding Settlement Negotiations

#### 1. Current Status of Settlement Negotiations

The parties have made substantial progress toward settlement, having reached agreement in principle on most of the important issues. The most significant issues remaining to be resolved relate to scope of the parties' respective consents to the other party's registrations of certain marks in relation to certain goods. On March 11, 2012 Opposer submitted its proposal for resolving the issues relating to consent to registration along with a statement of other proposed settlement terms to which the parties have largely reached agreement in principle. The parties expect to be able to resolve the remaining issues, if they can be resolved, within the next 30 days. An extension of this length is required because primary counsel for Opposer will be out of the country for 16 days of the suspension period.

#### 2. Progress Toward Settlement During the Most Recent Suspension Period

Immediately prior to the request for the last suspension, the negotiations were stalled primarily with respect to three issues: (1) the nature and scope of products with respect to which Applicant would be permitted to use Applicant's mark; (2) the nature and scope of the products with respect to which the Applicant could use its tagline containing

Applicant's mark, and (3) possible restrictions or requirements with respect to the size, location and use of Applicant's mark and/or tagline. During the most recent suspension period the parties have been able to largely resolve the issues that were of concern prior to the request for suspension in ways that are believed to be acceptable to the parties. However, in the give and take during the course of resolving those issues, other issues have arisen. Some of the new issues have been resolved, but as explained above, some have not.

### 3. Settlement Communications

Since August 2013 the parties have communicated at least 25 times regarding settlement, including the exchange of draft proposals, with five communications thus far in March 2014. The communications include at least those listed below:

- a. August 28, 2013 email communication from Applicant to Opposer setting forth settlement proposal.
- b. September 20, 2013 email communication from Opposer regarding further consideration of Applicant's settlement proposal.
- c. September 26, 2013 email correspondence from Opposer proposing settlement terms regarding trademark use as a basis for resolution of the opposition.
- d. October 2, 2013 email correspondence from Applicant responding to Opposer's settlement proposal and inviting further discussions.
- e. October 3, 2013 email correspondence from Opposer requesting telephone conference to discuss settlement.
- f. October 3, 2013 email correspondence from Applicant regarding telephone conference to discuss settlement.

g. October 7, 2013 telephone conference discussing settlement terms and terms in dispute.

h. October 8, 2013 email correspondence from Applicant requesting another telephone conference to address disputed terms and resolution of dispute.

i. October 15, 2013 telephone conference to discuss disputed terms and resolution of dispute.

j. November 22, 2013 email correspondence from Opposer with a counterproposal.

k. November 27, 2013 email correspondence from Applicant with revised settlement terms.

l. December 23, 2013 email correspondence from Opposer with questions regarding Applicant's proposed settlement terms.

m. December 24, 2013 email correspondence from Applicant responding to Opposer's questions regarding Applicant's proposed settlement terms.

n. February 10, 2014 email correspondence from Opposer with proposed revisions to Applicant's proposed terms of settlement.

o. February 12, 2014 email correspondence from Applicant responding to Opposer's settlement proposal.

p. February 12, 2014 email correspondence from Opposer in response to Applicant's email correspondence of that date.

q. February 12, 2014 telephone conference between the parties regarding disputed settlement terms and way to resolve these disputes.

r. February 18, 2014 telephone conference regarding possible approaches to resolving parties' differences.

s. February 20, 2014 email correspondence from Applicant with revised settlement terms based on telephone discussions.

t. March 5, 2014 email correspondence from Opposer with proposed revisions to settlement terms.

u. March 6, 2014 email correspondence addressing revisions proposed by Applicant to settlement terms.

v. March 11, 2014 telephone conference addressing parties' differences regarding settlement terms.

w. March 11, 2014 email correspondence from Applicant regarding proposed settlement terms discussed in telephone conference.

x. March 11, 2014 email correspondence from Opposer with settlement terms revised based on telephone conference.

Neways has secured the express consent of all parties to this proceeding for the extension requested here.

Neways has provided an email address for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

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DATED this 14<sup>th</sup> day of March, 2014.

By: /s/ Thomas R. Vuksinick

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