

ESTTA Tracking number: **ESTTA663543**

Filing date: **03/27/2015**

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

Proceeding.	91212553
Applicant	Plaintiff Whole Foods Market IP, L.P.
Other Party	Defendant 365 Laboratories, LLC
Have the parties held their discovery conference as required under Trademark Rules 2.120(a)(1) and (a)(2)?	Yes

## Motion for an Extension of Answer or Discovery or Trial Periods With Consent

The Close of Discovery is currently set to close on 08/31/2015. Whole Foods Market IP, L.P. requests that such date be extended for 60 days, or until 10/30/2015, and that all subsequent dates be reset accordingly.

Time to Answer :	CLOSED
Deadline for Discovery Conference :	CLOSED
Discovery Opens :	CLOSED
Initial Disclosures Due :	CLOSED
Expert Disclosure Due :	09/30/2015
Discovery Closes :	10/30/2015
Plaintiff's Pretrial Disclosures :	12/14/2015
Plaintiff's 30-day Trial Period Ends :	01/28/2016
Defendant's Pretrial Disclosures :	02/12/2016
Defendant's 30-day Trial Period Ends :	03/28/2016
Plaintiff's Rebuttal Disclosures :	04/12/2016
Plaintiff's 15-day Rebuttal Period Ends :	05/12/2016

The grounds for this request are as follows:

- *Parties are engaged in settlement discussions*
- *1. To date, the Parties have not exchanged any discovery as the Parties have been working diligently on settling this matter without the need for protracted litigation. 2. The Parties, through their counsel, have undertaken continuous and extensive dialogue, negotiation, and exchange of information in seeking to reach a settlement. As noted above, the Parties have not initiated formal discovery; however, the Parties have exchanged significant amounts of information, and have negotiated and drafted a settlement agreement that substantially addresses the outstanding issues. 3. Over the past 60 days, the Parties have negotiated the terms of the settlement agreement and are near a resolution. The Parties believe that the agreement can be finalized within the next 60 days.*

Whole Foods Market IP, L.P. has secured the express consent of all other parties to this proceeding for the extension and resetting of dates requested herein.

Whole Foods Market IP, L.P. has provided an e-mail address herewith for itself and for the opposing party so

that any order on this motion may be issued electronically by the Board.

### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,

/JEM/

Jered E. Matthyse

jmatthyse@pirkeybarber.com, smeleen@pirkeybarber.com, cgraff@pirkeybarber.com,

drausa@pirkeybarber.com, tmcentral@pirkeybarber.com

ckirsch@kirschlawfirm.com

03/27/2015