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

Proceeding	91212680
Party	Plaintiff Frito-Lay North America, Inc.
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Signature	/Paul Madrid/
Date	02/05/2015
Attachments	stipulation in resolution of motion to compel (executed by both parties).pdf(329119 bytes)

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

FRITO-LAY NORTH AMERICA, INC.,

Opposer,

v.

REAL FOODS PTY LTD,

Applicant.

Opposition No. 91212680 (parent)
Opposition No. 91213587

STIPULATION IN RESOLUTION OF MOTION TO COMPEL

WHEREAS, on January 23, 2015, Opposer Frito-Lay North America, Inc. (“Opposer”) filed a Motion to Compel Discovery (the “Motion”), seeking entry of an order by the Trademark Trial and Appeal Board compelling Applicant Real Foods Pty Ltd. (“Applicant”) (collectively, Opposer and Applicant are referred to as the “Parties”) to supplement certain discovery responses served by Applicant in response to Opposer’s Second Set of Interrogatories and Opposer’s Second Set of Requests for Production of Document and Things;

WHEREAS, without an admission of liability by either party as to the sufficiency of Applicant’s discovery responses at issue or the merits of Opposer’s Motion, and to avoid the time and cost of litigating Opposer’s Motion, the Parties desire and have agreed to resolve Opposer’s Motion through this stipulation (the “Stipulation”);

NOW, THEREFORE, it is hereby stipulated and agreed by and between the Parties as follows:

1. Applicant avers to the truth of the four statements (the “Statements”) set forth in the form of the stipulation annexed hereto as Exhibit A.

2. In addition, Applicant agrees to serve amended discovery responses to Opposer's First Set of Requests for Admissions, Second Set of Interrogatories and Second Set of Requests for Production of Document and Things (the "Amended Discovery Responses"), in accordance with the terms set forth in Applicant's January 30, 2015 correspondence to Opposer.

3. The Parties further agree to the following briefing deadlines on Applicant's Motion for Summary Judgment:

- Opposer's Brief in Response is due on or before March 12, 2015; and
- Applicant's Reply Brief is due on or before April 1, 2015.

4. In exchange for Applicant's agreement to stipulate to the truth of the Statements and the service of Amended Discovery Responses conforming to the January 30 letter (receipt of which is hereby acknowledged), and contingent upon the Board's approval of the Stipulation, Opposer withdraws its Motion.

STIPULATED TO BY:

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ATTORNEYS FOR APPLICANT
REAL FOODS PTY LTD

EXHIBIT A

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STIPULATION

1. Applicant Real Foods Pty Ltd. ("Applicant") avers to the truth of the following four statements:
 - a. In or near October 2005, Applicant retained The Leading Edge to provide it with an understanding of the U.S. rice and corn cake and crispbread markets in order to maximize its market share through current channels and by moving into new upmarket supermarket channels.
 - b. As a result of Applicant's retention, in or near March 2006, The Leading Edge prepared and gave to Applicant the presentation contained in that document bates-numbered RF000282-360.
 - c. Applicant paid The Leading Edge to gain an understanding of the U.S. rice and corn cake and crispbread market in order to maximize its market share through current channels and by moving into new upmarket supermarket channels, which resulted in the generation of, among other things, the presentation contained in that document bates-numbered RF000282-360 in or near March 2006.
 - d. Applicant states that as The Leading Edge was retained over nine years ago, the individuals at Real Foods other than Michael Pels, namely Jeremy Kahn and Joy Delis, who were involved in its retention are no longer with Real Foods. Accordingly, Applicant identifies Michael Pels as the individual at Real Foods who would have knowledge of the subject matter contained in the document bates-numbered RF000282-360; as considerable time has passed since Mr. Kahn and Ms. Delis left Real Foods, Applicant no longer has current contact information for these individuals.

In addition, given the passage of time and despite its diligent efforts, Applicant is unable to locate any documents related The Leading Edge, other than an October 2005 PowerPoint presentation that may be a draft proposal from The Leading Edge to Real Foods, a copy of which has been produced by Applicant as that document bates-numbered RF004799-4812, and the presentations (including that document bates-numbered RF000282-360) which were produced to Opposer by Applicant during the course of discovery in this proceeding.

Further, Applicant identifies Louise Metcalfe and Carolyn Scott as the relevant contacts of The Leading Edge, as set forth on the first page of the presentation bates-numbered RF000282-360. To the best of Applicant's knowledge, and upon information and belief, Ms. Metcalfe and Ms. Scott do not appear to be employed by The Leading Edge as of the date of this Stipulation, and as Applicant has not retained or otherwise used the services of The Leading Edge since 2007, it does not have current contact information for Ms. Metcalfe, Ms. Scott, or any other individual at The Leading Edge who would have knowledge of the presentation contained in RF000282-360.

STIPULATED TO BY:

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REAL FOODS PTY LTD

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing STIPULATION IN RESOLUTION OF MOTION TO COMPEL has been served on counsel of record for Applicant by mailing said copy on February 5, 2015, via First Class Mail, postage prepaid to:

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/Paul Madrid/
Paul Madrid