

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: November 10, 2015

Opposition No. 91212680 (**Parent Case**)
Opposition No. 91213587

Frito-Lay North America, Inc.

v.

Real Foods Pty Ltd

**George C. Pologeorgis,
Interlocutory Attorney:**

On November 4, 2015, the parties filed a stipulation to proceed under the Board's Accelerated Case Resolution ("ACR") procedure in these consolidated proceedings pursuant to the following terms:

- 1 In lieu of a full trial, the Board may employ its Accelerated Case Resolution ("ACR") procedure to resolve this consolidated case based on (i) the parties' cross-motions for summary judgment, responses and reply briefs filed in support thereof, and evidence and testimony submitted therewith, (2) the parties' briefs on Applicant's motion to amend its involved applications, as well as (3) supplemental briefing provided for in Paragraph 5. Additionally, the parties agree that the Board may resolve any genuine disputes of material fact arising from the parties' briefs and Trial Evidence;

- 2 The evidence at trial of these consolidated proceedings (the “Trial Evidence”) consists solely of the evidence automatically of record according to the Trademark Rules of Practice and evidence previously submitted by the parties in support of or in opposition to the motions for summary judgment. No additional evidence or declarations shall be submitted nor shall any additional witnesses be identified;
- 3 All objections to the admissibility of the Trial Evidence are waived, without prejudice to the parties’ rights to rely on arguments concerning the probative value of the Trial Evidence made in prior briefing or the right to assert arguments concerning the probative value of such Trial Evidence that may be raised by the parties’ supplemental briefing as provided for in Paragraph 5;
- 4 Opposer may submit a supplemental brief of no more than 20 pages no later than **December 1, 2015**. If Opposer submits a supplemental brief, Applicant may submit a supplemental brief of no more than 20 pages no later than **January 15, 2016**. If Applicant submits a supplemental brief, Opposer may submit a reply brief of no more than 10 pages no later than **January 29, 2016**.
- 5 Any supplemental briefing will be limited to the following topics: (i) legal arguments not previously raised or responded to in the briefs identified in Paragraph 1; (ii) discussion of Trial Evidence not previously discussed in the briefs identified in Paragraph 1; however, as provided in Paragraph 3,

all objections to admissibility have been waived; and (iii) any corrections to citations to the Trial Evidence in the parties summary judgment briefing. Should a party correct a citation made in a previous brief, the opposing party shall have the opportunity to address the corrected evidence in its supplemental briefing.

Because the parties agree that the Board may resolve disputes as to material fact which the Board may find to exist,¹ and may issue a final ruling after considering the parties' cross-motions for summary judgment and any supplementation thereto, as well as the parties' briefs on Applicant's motion to amend its applications, the parties' stipulation is hereby **APPROVED**.

The Board will expedite determination of this matter and render a final decision in accordance with the evidentiary burden at trial, that is, by preponderance of the evidence. *See* TBMP Section 702.04(a). The Board will endeavor to issue a decision on the merits within 50 days following the completion of ACR briefing. *Id.* The decision shall be judicially reviewable under 37 C.F.R. § 2.145.

¹ The Board may decide any issues not anticipated by the parties but which the Board may find the record to present.