

**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451**

Mailed: December 24, 2013

Opposition No. 91212801

Pepsico Inc.

v.

Nutritional Science Solutions  
Ltd.

**M. Catherine Faint,  
Interlocutory Attorney:**

On December 16, 2013, the Board held a telephone conference. The Board had scheduled the teleconference at the request of opposer's attorney, to hear an oral motion objecting to the dates set by applicant's stipulation for an extension of time filed December 12, 2013. The Board issued an email invitation to the telephone conference on December 13, 2013, which was accepted by Waheedan Jariwalla on behalf of applicant on the same date. The Board convened the teleconference at the scheduled date and time, but applicant never dialed in to the call. The Board waited ten minutes and then held the teleconference hearing with opposer's attorney.

***Motion to reset dates granted***

Opposer argues it did not consent to thirty days for extending the time for answer and resetting the dates for the remainder of the trial calendar but only to a two week

extension until December 26, 2013, solely for filing the answer. Opposer requests that the trial calendar be reset to the agreed dates.

The motion is **granted**. However, proceedings are suspended as noted below.

***Applicant must clarify representation***

On December 17, 2013, the Board discovered an email message sent from applicant's representative sent just prior to the scheduled teleconference, stating, "the email with the call in details seems to have disappeared from my in box." The message does not appear to have been copied to attorney for opposer.

Upon review, the Board notes that applicant is a limited company in the United Kingdom. On October 22, 2013, applicant's principal, S. Smith, filed an "appointment of attorney" in the application file appointing Waheedan Jariwalla of Gloucester, United Kingdom as the attorney of record.

If a party electing to represent itself is a business entity, the party may act through any individual who is (1) an officer of the party and who is (2) in fact authorized to represent it. Patent & Trademark Rule 11.14(e). Further, to qualify as foreign legal counsel in Board proceedings, Trademark Rule 11.14(c) provides in relevant part:

Any foreign attorney or agent not a resident of the United States who shall ... prove to the satisfaction of the OED Director that he or she is

registered or in good standing before the patent or trademark office of the country in which he or she resides and practices, and is possessed of good moral character and reputation, may be recognized for the limited purpose of representing parties located in such country before the Office in the presentation and prosecution of trademark matters, provided: the patent or trademark office of such country allows substantially reciprocal privileges to those permitted to practice in trademark matters before the Office.

In view thereof, applicant is allowed until **THIRTY DAYS** from the mailing date of this order to either: 1) make the requisite showing pursuant to Patent and Trademark Rule 11.14(c) to represent applicant in this proceeding; or 2) indicate whether the person who signed the December 12, 2013 is an officer of the corporation, and indicate whether the person has been authorized to represent the corporation; and 3) to ratify the December 12, 2013 stipulation for an extension of time.

Proceedings are otherwise suspended.

#### **NATURE OF BOARD PROCEEDINGS**

Applicant is advised that an *inter partes* proceeding before the Board is similar to a civil action in a Federal district court. There are pleadings, a wide range of possible motions; discovery (a party's use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. The

Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.

**REQUIREMENT FOR SERVICE OF PAPERS**

The service requirements are set forth in Trademark Rule 2.119. Trademark Rules 2.119(a) and (b) and require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board.

Consequently, copies of all papers which either party may subsequently file in this proceeding, including applicant's answer to the notice of opposition, must be accompanied by a signed statement indicating the date and manner in which such service was made. Strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

The Board will accept, as *prima facie* proof that a party filing a paper in a Board *inter partes* proceeding has

served a copy of the paper upon every other party to the proceeding, a statement signed by the filing party, or by its attorney or other authorized representative, clearly stating the date and manner in which service was made. This written statement should take the form of a "certificate of service" which should read as follows:

The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon opposer by forwarding said copy, via first class mail, postage prepaid to: [insert name and address].

The certificate of service must be signed and dated. See also TBMP §113 (2d ed. rev. 2004).

#### **OPTION OF E-MAIL SERVICE**

The parties may agree to the email service option now available under Trademark Rule 2.119(b)(6) ("Electronic transmission when mutually agreed upon by the parties").<sup>1</sup> Should the parties decide to continue using traditional service options, the parties may consider agreeing at least to courtesy email notification when any paper is served.

#### **THE BOARD'S STANDARDIZED PROTECTIVE ORDER IS IN PLACE**

The Board's standard protective order is in place in this case governing the exchange of confidential and proprietary information and materials. The parties may substitute a

---

<sup>1</sup> The additional five days available under Trademark Rule 2.119(c) for traditional service modes (e.g., First Class Mail) is not available for email service.

stipulated protective agreement (signed by both parties). However, the Board will not become involved in a dispute over any substitution in view of the existence of the Board's standardized protective order.

**REPRESENTATION**

It should be noted that while Patent and Trademark Rule 11.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. In addition, as the impartial decision maker, the Board may not provide legal advice, though may provide information as to procedure.

**ELECTRONIC RESOURCES**

All parties may refer to the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice, both available on the USPTO website, [www.uspto.gov](http://www.uspto.gov). The TTAB homepage provides electronic access to the Board's standardized protective order, the rules and answers to frequently asked questions. Other useful databases include

the ESTTA filing system<sup>2</sup> for Board filings and TTABVUE for status and prosecution history.

The Board's records are public records. Thus, applicant may use the TTABVUE database to view other cases to get an idea of the course of Board proceedings.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

\*\*\*

---

<sup>2</sup> Use of electronic filing with ESTTA, available through the USPTO website, is strongly encouraged. This electronic file system operates in real time. The filing party is also provided with a confirmation number that the filing has been received.

A party may also use first class mail. Correspondence required to be filed in the Office within a set period of time will be considered as being timely filed on the date of deposit in the mail if accompanied by a certificate of mailing.

**Certificate of Mailing**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

The certificate of mailing must be signed and dated. The actual date of receipt by the Office will be used for all other purposes, including electronically filed documents. The certificate of mailing must be signed and dated.

Opposition No. 91212801