

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: April 9, 2015

Opposition No. 91218523

Oakhurst Industries, Inc.
DBA Freund Baking Co.

v.

13th Ave Fish Market Inc.
DBA Freund's Fish

Jennifer Krisp, Interlocutory Attorney:

Pursuant to Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (2), the parties held a timely discovery and settlement conference on April 7, 2015. *See* TBMP § 401.01 (2014). At applicant's request, a member of the Board participated in the conference. Participating were Robert B.G. Horowitz on behalf of applicant, Steven A. Freund on behalf of opposer, and the assigned interlocutory attorney.

The Board apprised the parties of general procedural rules and guidelines that govern inter partes proceedings, including the Board's liberal granting of motions to suspend for settlement efforts, the requirement that a party serve its initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i) and (ii) prior to serving discovery requests (*see* Trademark Rule 2.120(a)(3)), as well as prior to filing a motion for summary judgment under most

circumstances (*see* Trademark Rule 2.127(e)(1)), and the requirements for filing materials under seal (*see* Trademark Rule 2.126(c); TBMP § 412.04 (2014)).

The Board's Standard Protective Order is automatically applicable in this proceeding pursuant to Trademark Rule 2.116(g). Although they are not required to do so, the parties may elect to exchange an executed copy of the order, and may file the copy with the Board. If the parties wish to modify the order in any manner, they must file a motion for the Board's approval of the modification(s).

The parties indicated in the conference that they do not anticipate modifying the protective order.

Turning to the pleadings, the Board briefly recapped its findings as set forth in the March 6, 2015 order.

The parties stipulated to exchange courtesy service copies of all Board filings by electronic mail. The parties stipulated to exchange discovery and documents produced in discovery by email, or by CD as needed due to the size or nature of the production.

The parties will utilize traditional discovery devices.

The Board briefly explained the availability of and features of the "accelerated case resolution" ("ACR") process. For further information, the parties were referred to TBMP §§ 528.05(a)(2), 702.04 and 705 (2014), as well as the "ACR and ADR" link on the Board's web page, which provide a vast

amount of information, as well as examples of ACR proceedings. The Board indicated that the parties should consider developing an agreed-upon ACR discovery and briefing schedule in the event that this proceeding does not reach settlement. In the event that they so stipulate and reduce a briefing schedule to writing, the parties should file this and may concurrently telephone the interlocutory attorney (571-272-9183) to assure that this proceeding is designated for the ACR docket.

During the conference, counsel for applicant set forth proposed terms for settlement of this proceeding, which counsel will provide in writing to opposer for its consideration. Counsel briefly discussed the proposed terms.

Initial disclosure, discovery and trial dates remain as set forth in the March 6, 2015 order.