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

Proceeding	92049013
Party	Defendant INA GARTEN LLC
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Submission	Opposition/Response to Motion
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Date	07/26/2011
Attachments	11 07 26 - Opposition to Motion to Suspend (F0832586).PDF (4 pages) (159695 bytes)

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

In the Matter of Trademark Registration No. 2,892,226 (Cancellation No. 92049013)
Mark: BAREFOOT CONTESSA
Registered: October 12, 2004

In the Matter of Application Serial No. 77/526,128 (Opposition No. 91192828)
Mark: BAREFOOT CONTESSA
Filed: July 18, 2008

In the Matter of Application Serial No. 77/550,245 (Opposition No. 91190791)
Mark: BAREFOOT CONTESSA
Filed: August 19, 2008

CONTESSA PREMIUM FOODS, INC.,

Petitioner/Opposer,

-against-

INA GARTEN LLC,

Registrant /Applicant.

Consolidated Proceeding
Cancellation No. 92049013
Opposition No. 91192828
Opposition No. 91190791

**OPPOSITION TO PETITIONER’S MOTION FOR A 60-DAY SUSPENSION AND
REQUEST FOR CORRECTION OF BOARD’S JULY 25, 2011 ORDER AND FOR
RESUMPTION OF PROCEEDING**

Registrant/Applicant Ina Garten LLC (“Garten”) submits this memorandum in opposition to Petitioner/Opposer Contessa Premium Foods, Inc.’s (“Petitioner”) motion for a further 60-day suspension. Settlement negotiations have ceased, Contessa Premium was aware of that prior to filing its motion for a further suspension and there is no reason for this case to incur further delays at this point. The case should move forward on the merits.

FACTS

On July 21, 2011, Petitioner / Opposer Contessa Premium Foods, Inc. (“Petitioner”) filed a motion for a 60-day suspension of all proceedings, stating various grounds, including that “the additional suspension will provide the parties with additional time to negotiate... [a] settlement agreement.” Petitioner, however, has failed to inform the Board of a critical fact, namely, that Petitioner specifically proposed a further 60-day suspension to allow for continued settlement discussions, and Garten expressly rejected the request.

On July 21, 2011, the very day Petitioner filed the instant motion for a suspension, Garten’s counsel sent Petitioner’s counsel an e-mail stating as follows:

[Garten] has not authorized me to grant any further extensions or to provide comments on the agreement. You should plan to move forward with the litigation under the current deadlines.

This case and Petitioner’s baseless allegations of fraud have been pending for more than three years.¹ Over the course of such time, the Board has dismissed four complaints filed by Petitioner (two in the cancellation proceeding and one in each opposition proceeding), each time for a failure to properly plead its fraud claims. After the last dismissal, Petitioner filed amended pleadings making only the most cosmetic of changes to each of its fraud claims, once again without providing any factual basis for such claims. Accordingly, more than five months ago, Garten filed a motion to dismiss / for summary judgment Petitioner’s fraud claims (the “Motion to Dismiss”). Although the parties suspended the case twice to allow for settlement discussions, those talks have now concluded and Garten wants to move forward with the case.

Also, by order dated July 25, 2011 (the “Order”), the Board granted the parties’ June 21, 2011 consented motion to suspend, but granted a longer suspension than had been requested by the parties. On June 21, 2011, the parties requested suspension of the case for thirty (30) days

¹ The first of these consolidated proceedings, Cancellation No. 92049013, was filed on March 14, 2008.

until July 21, 2011, but the Board's Order suspends the case through August 21, 2011. The Order also provides that the suspension is "subject to the right of either party to request resumption at any time." Registrant hereby requests that the Board issue an amended order, resuming the case and scheduling Petitioner's deadline to respond to Registrant's outstanding Motion to Dismiss for fifteen (15) days from the date of such amended order.

Dated: New York, New York
July 26, 2011

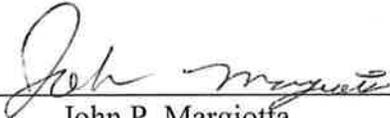
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Opposition to Petitioner's Motion for a 60-Day Suspension and Request for Correction of Board's July 25, 2011 Order and for Resumption of Proceedings** to be deposited with the United States Postal Service as First Class mail, postage prepaid, in an envelope addressed to J.D. Harriman II, DLA Piper LLP, 1999 Avenue of the Stars, Fourth Floor , Los Angeles, CA 90067 counsel of record for Petitioner / Opposer, this 26th day of July, 2011.



John P. Margiotta