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

Proceeding	91163013
Party	Plaintiff Franklin Loufrani
Correspondence Address	Steven L. Baron Mandell Menkes & Surdyk, LLC 333 W. Wacker Drive, Suite 300 Chicago, IL 60606 UNITED STATES
Submission	Motion to Suspend for Settlement Discussions
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Signature	/NAH/
Date	10/25/2007
Attachments	10-25 Agreed Motion to Suspend.pdf (4 pages)(163114 bytes)

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

FRANKLIN LOUFRANI,)	
)	
Opposer,)	
)	
v.)	Consolidated Opposition No 91/163013
)	
B. MICHAEL PERLIN,)	
)	
Applicant.)	

AGREED MOTION TO SUSPEND AND RE-OPEN DISCOVERY PERIODS

Applicant B. Michael Perlin (“Perlin”) and Opposer Franklin Loufrani (“Loufrani”), hereby move the Board to suspend Consolidated Opposition No. 91/163013 for sixty days, through and including December 24, 2007, for the purposes of settlement negotiations pursuant to 37 CFR § 2.117(c). In the event that Perlin and Loufrani are unable to resolve the Consolidated Opposition during the sixty day suspension, the parties move the Board to re-open the discovery periods in both proceedings as set forth below. In support of this combined motion, the parties state as follows:

1. On November 3, 2004, Loufrani filed opposition No. ‘013, related to Perlin’s application serial no. 78273402 for the mark “Smiley Tooth” (with “tooth” disclaimed) for dental floss in international class no. 21.
2. Loufrani’s opposition No. ‘013 arises from Loufrani’s various United States trademark registrations and applications involving the mark “SMILEY” in conjunction with a variety of goods and services.
3. Loufrani issued written discovery in opposition No. ‘013 on November 20, 2006, and Perlin’s responses to the written discovery remain outstanding.
4. On June 7, 2006, Loufrani filed opposition No. ‘270 related to Perlin’s application serial no. 78635440 for “SMILEY TOOTH” for a variety of clothing in international class no. 25.
5. Loufrani’s opposition No. ‘270 also arises from Loufrani’s various United States trademark registrations and applications involving the mark “SMILEY” in conjunction with a variety of goods and services.

6. On January 15, 2007, the parties filed an Agreed Combined Motion to Consolidate, Suspend and, Re-Open Discovery Periods.

7. The TTAB granted the Agreed Motion and consolidated opposition nos. '013 and '270, and the proceedings were suspended through March 12, 2007.

8. During the suspension, Perlin and Loufrani continued to pursue settlement negotiations, but were unable to resolve the Consolidated Opposition.

9. In an effort to foster negotiations and increase the possibility of settlement, Perlin and Loufrani requested an additional 90 day suspension, through July 11, 2007, on April 11, 2007. The Board granted the parties requested suspension on June 8, 2007.

10. Pursuant to the Board's June 8, 2007 Order, the proceedings resumed on September 10, 2007. Since that date, the parties have exchanged a revised draft settlement agreement and believe that settlement of the matter may be imminent.

11. In light of the reinvigorated settlement negotiations, the parties jointly move the Board to suspend the proceedings for 60 days, through December 24, 2007, for the purposes of settlement negotiations pursuant to 37 CFR § 2.117(c).

12. In the event that Perlin and Loufrani are unable to resolve the Consolidated Opposition by December 24, 2007, the parties agree to re-open the discovery period for both oppositions for thirty days and to reset the remaining schedule as follows:

THE PERIOD FOR DISCOVERY TO CLOSE: 2/06/08

Thirty-day testimony period for plaintiff to close: 4/7/08

Thirty-day testimony period for defendant in opposition and Plaintiff in counterclaim to close: 6/6/08

Thirty-day testimony period for defendant in counterclaim and Its rebuttal testimony as plaintiff in the opposition to close: 8/6/08

Fifteen-day rebuttal testimony period for plaintiff in the Counterclaim to close: 9/22/08

Briefs shall be due as follows:

Brief for plaintiff in the opposition shall be due: 11/21/08

Brief for defendant in the opposition and as plaintiff in the Counterclaim shall be due: 12/21/08

Brief for defendant in the counterclaim and its reply brief (if any)
As plaintiff in the opposition shall be due: 1/20/09

Reply brief (if any) as plaintiff in the counterclaim shall be due: 2/4/09

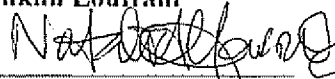
Should the Trademark Trial and Appeal Board require adjustment of any of the above dates, the parties hereby mutually agree to such adjustment.

13. The order re-opening the discovery period for the Consolidated Opposition shall include a fifteen day deadline, through including January 8, 2008, by which Perlin shall be required to respond to Loufrani's outstanding written discovery, without waiver of any right of objection or claim of privilege

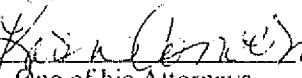
WHEREFORE, applicant B Michael Perlin and Opposer Franklin Loufrani respectfully request that the Board enter an order suspending the proceedings for settlement negotiations through and including December 24, 2007 and re-opening the discovery periods in accordance with the revised schedule set forth above in the event that the parties are unable to resolve the subject oppositions by December 24, 2007.

Respectfully submitted.

Franklin Loufrani

By: 
One of his Attorneys
and

B. Michael Perlin

By: 
One of his Attorneys

October 29, 2007

Steven L. Baron
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(312) 251-1000

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that I caused a copy of the foregoing *Agreed Motion To Suspend and Re-Open Discovery Periods* to be served on:

Donn K. Harms
American Patent and Trademark Law Center
12702 Via Cortina, Suite 100
Del Mar, CA 92014-3769

via First Class Mail, by causing a copy to be placed in a sealed, postage pre-paid envelope, properly addressed as above, and causing said envelope to be deposited at 333 W. Wacker Drive, Chicago, Illinois 60606, and by facsimile this 26th day of October, 2007.



Natalie A. Harris