

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

EJW

Mailed: May 22, 2008

Opposition No. 91181835

BBK Tobacco & Foods, Inc.

v.

American Weigh Scales, Inc.

Elizabeth J. Winter, Interlocutory Attorney:

The Board notes that applicant filed on April 16, 2008 a consented motion to suspend this proceeding for thirty days so that the parties may further pursue settlement.¹

Because more than thirty days has passed² since the filing of said motion and the parties are negotiating for possible settlement of this case, the motion is granted and

¹ The Board also notes that applicant's certificate of service required by Trademark Rule 2.119, 37 C.F.R. 2.119, refers to the applicant's answer instead of referring to the subject motion to suspend. However, inasmuch as the motion is consented (and has not otherwise been opposed by opposer), and to expedite matters, a copy of applicant's submission will be forwarded to opposer's counsel along with this order. Strict compliance with the Trademark Rules is expected in future submissions to the Board.

² While the Board attempts, where possible, to notify the parties of its decision on a consented motion to extend or to suspend, prior to expiration of the enlargement sought, the Board is under no obligation to do so, and in many cases cannot. See *Chesebrough-Pond's Inc. v. Faberge, Inc.*, 618 F.2d 776, 205 USPQ 888 (CCPA 1980). Therefore, it is preferable, that a motion to extend or to suspend request that the new period or periods be set to run from the date of the Board's decision on the motion.

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proceedings herein are **SUSPENDED** until **THIRTY DAYS** (approximately) from the mailing date of this action, subject to the right of either party to request resumption at any time. See Trademark Rules 2.117(c) and 2.127(a), 37 C.F.R. §§ 2.117(c) and 2.127(a).

In the event that there is no word from either party concerning the progress of their negotiations, upon conclusion of the suspension period, proceedings shall resume without further notice or order from the Board, upon the schedule set out below.

Discovery Opened	3/21/2008
<u>Proceeding Resumes</u>	<u>6/23/2008</u>
Initial Disclosures Due	7/23/2008
Expert Disclosures Due	11/20/2008
Discovery Closes	12/20/2008
Plaintiff's Pretrial Disclosures	2/3/2009
Plaintiff's 30-day Trial Period Ends	3/20/2009
Defendant's Pretrial Disclosures	4/4/2009
Defendant's 30-day Trial Period Ends	5/19/2009
Plaintiff's Rebuttal Disclosures	6/3/2009
Plaintiff's 15-day Rebuttal Period Ends	7/3/2009

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of

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the taking of testimony. Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b), 37 C.F.R. § 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.

If, during the suspension period, either of the parties or their attorneys should have a change of address, the Board should be so informed.



NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>

Trademark Trial and Appeal Board Electronic Filing System. <http://esta.uspto.gov>

ESTTA Tracking number: ESTTA205295

Filing date: 04/16/2008

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

Proceeding	91181835
Party	Defendant American Weigh Scales, Inc.
Correspondence Address	JOHN ALUMIT PATEL & ALUMIT, PC 16830 VENTURA BLVD STE 360 ENCINO, CA 91436-1711 UNITED STATES jalumit@patelalumit.com
Submission	Motion to Suspend for Settlement Discussions
Filer's Name	Michael Cerrati
Filer's e-mail	jalumit@patelalumit.com, michael@patelalumit.com
Signature	/michael.cerrati/
Date	04/16/2008
Attachments	AWS Request for Suspension of Proceeding (91181835).pdf (2 pages)(44085 bytes)

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

BBK TOBACCO & FOODS, INC.)	
)	
Opposer,)	Opposition No.: 91181835
)	Serial No: 77/132,844
v.)	Mark: NUTRIBALANCE
)	Filed: March 16, 2007
AMERICAN WEIGH SCALES, INC.,)	Published: September 18, 2007
)	
Applicant.)	
)	
)	
)	

**REQUEST FOR SUSPENSION OF OPPOSITION PROCEEDING
PURSUANT TO SETTLEMENT NEGOTIATIONS**

Trademark Trial and Appeal Board
P.O. Box 1451
Arlington, VA 22313-1451

Dear Sir or Madam,

Applicant, American Weigh Scales, Inc., and Opposer, BBK Tobacco & Foods, Inc., jointly request suspension of Opposition No. 91181835 between the parties for a period of thirty (30) days in order to further pursue settlement.

This request is made for good cause to give the parties additional time to discuss settlement and to potentially negotiate an agreement which may be dispositive of the action.

Respectfully Submitted,

Dated as of: April 16, 2008

By: 
John Alumit
Michael Cerrati
Patel & Alumit, PC
16830 Ventura Blvd., Suite 360
Encino, CA 91436
(818) 380-1900

Attorneys for Applicant,
American Weigh Scales, Inc.

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION** has been served on Opposer's Legal Department on April 16, 2008, by via First Class U.S. Mail, postage prepaid to:

BBK Tobacco & Foods, Inc.
Attn: Legal Department
3315 W. Buckeye Rd., Ste. 4
Phoenix, AZ 85009



My Stern