

THIS ORDER IS NOT A
PRECEDENT OF THE
TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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mbm

January 8, 2021

Opposition No. 91205049 (**Parent**)
Opposition No. 91205093

Productos Lacteos Tocumbo , S.A. DE C.V.

v.

PLM Operations, LLC

Opposition No. 91205466
Opposition No. 91205468
Opposition No. 91245908
Opposition No. 91249913

PLM Operations, LLC

v.

Productos Lacteos Tocumbo, S.A. DE C.V.

By the Trademark Trial and Appeal Board:

On May 19, 2020, PLM Operations, LLC (“PLM”) filed a motion for summary judgment in these consolidated proceedings on the ground of issue preclusion in Opposition Nos. 91205466, 91205468, and 91245908. Productos Lacteos Tocumbo, S.A. DE C.V. (“Prolatco”) did not file a timely response to the summary judgment motion.

Opposition Nos. 91205049, 91205093, 91205466, 91205468, 91245908, and 91249913

PLM's motion for summary judgment in Opposition Nos. 91205466, 91205468, and 91245908 is **granted** as conceded. *See* Trademark Rules 2.127(a) and Fed. R. Civ. P. 56.

Accordingly, judgment is entered against Prolacto in Opposition Nos. 91205466, 91205468, and 91245908, the oppositions in each of these proceedings are sustained, and registration to Prolacto is refused in each of these proceedings.

In view of the foregoing, Opposition Nos. 91205466, 91205468, and 91245908 are no longer consolidated with Opposition Nos. 91205049, 91205093, and 91249913. These consolidated proceedings will proceed with respect to Opposition Nos. 91205049, 91205093, and 91249913 only.

On August 18, 2020, Prolacto filed a motion for default judgment on its counterclaims in Opposition No. 91249913. The motion is contested.¹

As last reset by the Board's May 19, 2020 order, PLM's answer to Prolacto's counterclaims in Opposition No. 91249913 was due by June 18, 2020. 33 TTABVUE 10. Prolacto contends that PLM is in default, because it failed to file its answer to the counterclaims by that deadline.

The Board's May 19, 2020 order further consolidated Opposition Nos. 91245908 and 91249913 with Opposition Nos. 91205049, 91205093, 91205466, and 91205468. 33 TTABVUE 2-4. When a party files a timely summary judgment motion, the case is considered automatically suspended by operation of Trademark Rule 2.127(d) with

¹ The parties filed their briefs in both Opposition No. 91205049 and Opposition No. 91249913. With the exception of the pleadings, only a single copy of any filing should be made in Opposition No. 91205049, the parent case, only.

Opposition Nos. 91205049, 91205093, 91205466, 91205468, 91245908, and 91249913

respect to all matters not germane to the motion. Accordingly, these consolidated proceedings were suspended as of the filing date of PLM's summary judgment motion. Additionally, on May 27, 2020, prior to the expiration of PLM's deadline for filing its answer to the counterclaims in Opposition No. 91249913, the Board issued a suspension order in the consolidated proceedings suspending **all** proceedings pending disposition of PLM's May 19, 2020 summary judgment motion.² The suspension of all consolidated proceedings therefore tolled the time for PLM to file an answer to the counterclaims in Opposition No. 91249913. PLM is accordingly not in default on the counterclaims. Prolacto's motion for default judgment on its counterclaims in Opposition No. 91249913 is therefore **denied**.

Proceedings in Opposition Nos. 91205049, 91205093, and 91249913 are resumed.

Remaining dates are reset as follows:

Answer to Counterclaim in Opposition No. 91249913 Due ³	1/28/2021
Deadline for Discovery Conference	2/27/2021
Discovery Opens	2/27/2021
Initial Disclosures Due	3/29/2021
Expert Disclosures Due	7/27/2021
Discovery Closes	8/26/2021
Pretrial Disclosures for Prolacto as Plaintiff and CCC Plaintiff	10/10/2021
30-day Trial Period Ends for Prolacto as Plaintiff and CCC Plaintiff	11/24/2021
Pretrial Disclosures for PLM as Defendant, as CCC Defendant, and as CC Plaintiff	12/9/2021
30-day Trial Period Ends for PLM as Defendant, as CCC Defendant, and as CC Plaintiff	1/23/2022

² The Board's May 19, 2020 order inadvertently provided that PLM's answer was due twenty days after the date of the Board's order, inconsistent with the deadline set forth in the schedule at the conclusion of the order. Inasmuch as proceedings were suspended prior to the deadline, the inadvertent miscalculation is not relevant to determination of the motion.

³ PLM should file its answer to the counterclaim separately in Opposition No. 91249913 as an exception to the general rule that all filings be made in the parent case only.

Pretrial Disclosures for Rebuttal of Prolacto as Plaintiff, as CCC Plaintiff, and as CC Defendant	2/7/2022
30-day Trial Period Ends for Rebuttal of Prolacto as Plaintiff, as CCC Plaintiff in 91249913, and as CC Defendant	3/24/2022
Pretrial Disclosures for Rebuttal of PLM as CC Plaintiff	4/8/2022
15-day Trial Period Ends for Rebuttal of PLM as CC Plaintiff	5/8/2022
Opening Brief for Prolacto as Plaintiff and as CCC Plaintiff	7/7/2022
Combined Brief for PLM as Defendant, as CCC Defendant, as CC Plaintiff	8/6/2022
Combined Rebuttal Brief for Prolacto as Plaintiff, as CCC Plaintiff, and as CC Defendant	9/5/2022
Rebuttal Brief for PLM as CC Plaintiff	9/20/2022
Request for Oral Hearing (optional) Due	9/30/2022

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for

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example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. **Note:** Parties are strongly encouraged to check the entire document before filing.⁴ The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the [ESTTA help](#) webpage.

⁴ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.