

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: January 26, 2017

Opposition No. 91225571

Nestle USA, Inc.

v.

Frito-Lay North America, Inc.

Joi M Wilson, Paralegal Specialist:

Because the parties are negotiating for possible settlement of this case, proceedings are extended subject to the right of either party to request resumption at any time. *See* Trademark Rules 2.117(c), and 2.127(a); TBMP § 605.02.

If, during the extension period, either of the parties or their attorneys have a change of address or email address, the Board should be so informed. *See* Trademark Rule 2.18(b)(1).

Status Report Required for Future Motions to Suspend or Extend for Settlement

The Board retains discretion to condition the approval of a consented or stipulated motion to suspend on the party or parties providing necessary information about the status of settlement talks, discovery activities, or trial activities, as may be appropriate. *See* Trademark Rule 2.117(c).

Due to the number of extensions approved thus far in this proceeding, the Board imposes a condition on the approval of all future motions to suspend or

extend for settlement. Specifically, to establish good cause for all future motions to suspend or extend, the parties must include in the motion a status report setting forth what specific efforts the parties have made towards settlement during the previous period of extension. The report must set forth, at a minimum, **1) all dates on which the parties communicated, and the method of each communication (e.g. telephone conferences, emails, in-person meetings), 2) the general nature of each communication, 3) the issues that have been resolved, 4) the issues that remain to be resolved or that remain for trial, and 5) a proposed timetable for resolution of the remaining issues.** Appropriately designated confidential information or materials may be filed under seal pursuant to Trademark Rule 2.126(c). *See* TBMP § 605.02.

Due to this requirement, the parties may no longer use the ESTTA consent forms to submit motions to extend or suspend dates for settlement; rather, the parties must file a written motion which includes the required status report, and which sets forth a proposed trial schedule.¹ This bar is limited to consent motions based on settlement discussions, and does not prohibit the use of ESTTA consent forms for other filings.

¹ When parties stipulate to the rescheduling of a deadline for pretrial disclosures and subsequent testimony periods or to the rescheduling of the closing date for discovery and the rescheduling of subsequent deadlines for pretrial disclosures and testimony periods, a stipulation presented in the form used in a trial order, signed by the parties, or a motion in said form signed by one party and including a statement that every other party has agreed thereto, shall be submitted to the Board through ESTTA, with the relevant dates set forth and an express statement that all parties agree to the new dates. Trademark Rule 2.121(d).

Absent the required status report, a motion to suspend or extend may be denied, even if consented to by the parties. If the Board denies such a motion, dates may remain as previously set. *See* TBMP § 509.01(a).

If there is no word from either party concerning the status of settlement, upon conclusion of the suspension period, proceedings shall resume without further notice or order from the Board, upon the schedule set forth in Applicant's motion.

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, matters in evidence, the manner and timing of taking testimony, 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).