

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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January 23, 2020

Opposition No. 91231833

*Birds Eye Foods, LLC and  
Kennedy Endeavors, LLC*

*v.*

*Hawaiian Chip Company LLC*

**Winston Folmar, Interlocutory Attorney:**

This case now comes up for consideration of: (1) Opposer's renewed motion to join Kennedy Endeavors, LLC ("KE, LLC") as a party-plaintiff and entry of appearance of new counsel, filed January 8, 2020 (48 TTABVUE); and (2) Opposer's consent motion to suspend proceedings for sixty (60) days for settlement negotiations, filed December 3, 2019 (45 TTABVUE), but held in abeyance pursuant to the Board's order of December 20, 2019 (47 TTABVUE). The Board elects to proceed without awaiting a response to Opposer's motion to join from Applicant.<sup>1</sup>

**OPPOSER'S MOTION TO JOIN KE, LLC AND ENTRY OF NEW COUNSEL**

The Board notes that an assignment of the involved registration, namely, Registration No. 3697408, from Kennedy Endeavors, Incorporated to KE, LLC was

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<sup>1</sup> Because a party may be joined on the Board's own initiative, the Board finds that a response to Applicant's motion to join is unnecessary in this case. Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 512.01 (2019).

executed on October 21, 2019 and recorded on January 8, 2020 at Reel/Frame 6833/0594. When there has been an assignment of a mark that is the subject of, or relied upon in, an inter partes proceeding before the Board, the assignee may be joined or substituted, as may be appropriate. TBMP § 512.01. Because the assignment of the subject applications occurred after the commencement of this proceeding, KE, LLC is joined as a party-plaintiff. *Id.*

Additionally, the Board notes the new power of attorney executed by KE, LLC's chief executive officer appointing the law firm of Cozen O'Connor as Opposer's new counsel. 48 TTABVUE 15.

The Board's records have been updated accordingly.

#### **OPPOSER'S CONSENTED MOTION TO SUSPEND FOR SETTLEMENT**

Opposer's consented motion to suspend this proceeding for 60 days is **granted**. Because the parties are negotiating for a possible settlement of this case and the provided report established good cause for an additional suspension/extension, proceedings are suspended, subject to the right of either party to request resumption at any time.<sup>2</sup> *See* Trademark Rules 2.117(c) and 2.127(a); and TBMP § 605.02. Moreover, in the event that additional time is required for settlement communication, parties are reminded that a status report of the particular settlement discussions is required per the Board's order of October 5, 2019. 43 TTABVUE. **Absent the**

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<sup>2</sup> The parties should note that if proceedings are suspended for a lengthy period of time pursuant to the filing of several motions to suspend for settlement, the Board retains discretion to condition the approval of any future consented or stipulated motion to suspend on a party or the 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).

**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).

Due to this requirement, the parties may no longer use the ESTTA “Consent Motions” forms to submit motions to suspend (or extend) dates for settlement. Rather, the parties must select the “Opposition, Cancellation or Concurrent Use (general filing)” option, the “Scheduling Motions” option, then the “Motion to suspend for Settlement Discussions” form in order for the parties to attach a prepared motion. **The motion must set forth both the required status report and a proposed trial schedule.**

#### SCHEDULE

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 forth below.

Discovery Closes	<b>March 8, 2020</b>
Pretrial Disclosures Due for Party in Position of Plaintiff in Original Claim	<b>April 23, 2020</b>
30-Day Trial Period Ends for Party in Position of Plaintiff in Original Claim	<b>June 7, 2020</b>
Pretrial Disclosures Due for Party in Position of Defendant in Original Claim, and Plaintiff in Counterclaim	<b>June 22, 2020</b>
30-Day Trial Period Ends for Party in Position of Defendant in Original Claim, and Plaintiff in Counterclaim	<b>August 6, 2020</b>
Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Original Claim, and Defendant in Counterclaim	<b>August 21, 2020</b>
30-Day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Original Claim, and Defendant in Counterclaim	<b>October 5, 2020</b>

Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Counterclaim	<b>October 20, 2020</b>
15-Day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Counterclaim	<b>November 19, 2020</b>
<b>BRIEFS ARE DUE AS FOLLOWS:</b>	
Opening Brief for Party in Position of Plaintiff in Original Claim Due	<b>January 18, 2021</b>
Combined Brief for Party in Position of Defendant in Original Claim and Opening Brief as Plaintiff in Counterclaim Due	<b>February 17, 2021</b>
Combined Rebuttal Brief for Party in Position of Plaintiff in Original Claim and Brief as Defendant in Counterclaim Due	<b>March 19, 2021</b>
Rebuttal Brief for Party in Position of Plaintiff in Counterclaim Due	<b>April 3, 2021</b>
<b>REQUEST FOR ORAL HEARING:</b>	
Deadline to Request Oral Hearing (optional):	<b>April 13, 2021</b>

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).