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

Proceeding	91233439
Party	Defendant 2XU Pty Ltd
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Submission	Motion to Suspend for Settlement Discussions
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Date	10/16/2018
Attachments	2018-10-16 2XU Motion to Suspend.pdf(65147 bytes)

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

H. BEST, LTD,

Opposer,

vs.

2XU PTY LTD,

Applicant.

Opposition No.: 91233439

Application Nos.: 86/810,490,
86/810,472,
86/810,459,
86/895,095

Mark: X

MOTION ON CONSENT TO SUSPEND FOR SETTLEMENT DISCUSSION

Pursuant to Trademark Rule 2.117(c), 37 CFR § 2.117(c), Applicant 2XU Pty Ltd, files this Motion seeking a 180 day suspension of time for the parties to continue their settlement negotiations, and requests that all subsequent dates be reset accordingly. Opposer and Applicant's counsel have consented to this motion to suspend for settlement discussions via electronic mail. The parties have made substantial progress toward resolution of this matter. However, there are several related proceedings among the parties, namely Opp. Nos. 91229856 and 91225301, and the parties are seeking to resolve all of the disputes between them relating to use and registration of the various marks involved in these proceedings on a global basis. Given the complexity of the matter and global nature of the trademarks involved, the suspension of time is sought to allow the parties to resolve all unresolved issues and finalize their settlement agreement. Further, Applicant is located in Australia and due to logistics and different time zones, additional time is needed to communicate between Applicant and its counsel, and Opposer and its counsel in New York.

As requested by the Board, the parties have attached as Exhibit A, a detailed report of the parties' settlement efforts listing (1) all dates on which the parties communicated, and the method of each communication since the last suspension, (2) the general nature of each communication, (3) the issues that have been resolved, (4) the issues that remain to be resolved, and (5) the proposed timetable for resolution of the unresolved issues.

Applicant requests that the Board suspend this proceeding and all subsequent deadlines by 180 days, as outlined below. The parties further request that the proceeding be suspended pending disposition of this motion. In the event that the Board denies this motion, the parties requests an extension of deadlines by thirty (30) days after such denial.

Accordingly, the parties request that the Opposition be suspended and if the parties do not reach a mutually agreed upon settlement by April 15, 2019, the schedule should be reset as follows:

	Current Schedule	Proposed Schedule
Time to Answer	10/16/2018	4/14/2019
Deadline for Discovery Conference	11/15/2018	5/14/2019
Discovery Opens	11/15/2018	5/14/2019
Initial Disclosures Due	12/15/2018	6/13/2019
Expert Disclosures Due	4/14/2019	10/11/2019
Discovery Closes	5/14/2019	11/10/2019
Plaintiff's Pretrial Disclosures Due	6/28/2019	12/25/2019
Plaintiff's 30-day Trial Period Ends	8/12/2019	2/8/2020
Defendant's Pretrial Disclosures Due	8/27/2019	2/23/2020
Defendant's 30-day Trial Period Ends	10/11/2019	4/8/2020
Plaintiff's Rebuttal Disclosures Due	10/26/2019	4/23/2020
Plaintiff's 15-day Rebuttal Period Ends	11/25/2019	5/23/2020
Plaintiff's Opening Brief Due	1/24/2020	7/22/2020

Defendant's Brief Due
Plaintiff's Reply Brief Due

2/23/2020 8/21/2020
3/9/2020 9/5/2020

Respectfully submitted,



Dated: October 16, 2018

By: _____

Jennifer Lee Taylor
Attorney for Applicant
2XU Pty Ltd

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Exhibit A
Progress Report Outlining Settlement Negotiations

I. ALL DATES ON WHICH THE PARTIES COMMUNICATED SINCE THE LAST SUSPENSION, METHOD OF EACH COMMUNICATION, AND THE GENERAL NATURE OF EACH COMMUNICATION

<u>Date of Communication</u>	<u>Method</u>	<u>Nature of Communication</u>
4/18/2018	Email	<ul style="list-style-type: none">• Negotiations regarding draft of settlement agreement.
5/31/2018	Email	<ul style="list-style-type: none">• Email exchange regarding status of draft settlement agreement.
7/3/2018	Email	<ul style="list-style-type: none">• Applicant's revisions to draft settlement agreement; questions regarding definitions of critical terms.
7/10/2018	Email	<ul style="list-style-type: none">• Opposer's revisions to draft settlement agreement; questions regarding definitions of critical terms.
8/2/2018	Email	<ul style="list-style-type: none">• Email exchange regarding status of draft settlement agreement; discussion of definitions of critical terms.
8/23/2018	Email	<ul style="list-style-type: none">• Email exchange regarding status of draft settlement agreement; discussion of definitions of critical terms.
9/4/2018	Email	<ul style="list-style-type: none">• Email exchange regarding status of draft settlement agreement; discussion of definitions of critical terms.
9/5/2018	Email	<ul style="list-style-type: none">• Email exchange regarding status of draft settlement agreement; discussion of definitions of critical terms.
9/25/2018	Email	<ul style="list-style-type: none">• Opposer's response to revised draft of settlement agreement sent to Applicant; question regarding trade channels.

II. ISSUES THAT HAVE BEEN RESOLVED

The following issues have been resolved between the parties:

- General co-existence terms regarding use and registration of various of the parties' respective marks;
- Various general contract terms relating to performance, breach and contract interpretation.
- Use and registration of additional marks among the parties;

III. ISSUES THAT REMAIN TO BE RESOLVED

The following issues remain to be resolved between the parties but revised terms have recently been exchanged in order to resolve the below issues expeditiously:

- Additional specific terms to be included in settlement agreement.

IV. PROPOSED TIMETABLE FOR RESOLUTION OF THE UNRESOLVED ISSUES

The parties propose the timetable outlined below for resolution of the unresolved issues.

<u>Task</u>	<u>Due Date:</u>
Negotiate all unresolved issues	10/16/2018-1/31/2019
Finalize any additional unresolved issues	3/15/2019
Execute agreed upon settlement agreement	4/10/2019

sf-3951380

CERTIFICATE OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105. I am not a party to the within cause, and I am over the age of eighteen years.

I HEREBY CERTIFY that on October 16, 2018, I caused a true and correct copy of the foregoing MOTION ON CONSENT TO SUSPEND FOR SETTLEMENT DISCUSSION to be sent via Morrison & Foerster LLP's e-mail system to Opposer's Attorney of Record:

Meichelle R. MacGregor
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New York, NY 10036

Dina Roumiantseva

(typed)

/s/Dina Roumiantseva

(signature)