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

Proceeding	91233439
Party	Plaintiff H. Best, Ltd.
Correspondence Address	MEICHELE MACGREGOR COWAN LIEBOWITZ & LATMAN PC 114 W 47TH STREET NEW YORK, NY 10036 UNITED STATES mrm@cll.com, rxa@cll.com, esk@cll.com, vpc@cll.com, trademark@cll.com 212-790-9200
Submission	Motion to Suspend for Settlement Discussions
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Date	09/12/2019
Attachments	Motion on Consent to Suspend X 2XU Pty LTD- 91233439.pdf(46449 bytes )

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

In re App. Nos.  
86/810,490, 86/810,472,  
86/810,459,86/895,095  
For Mark: (X)

H. BEST, LTD.,  v.  2XU PTY. LTD.,	Opposer,     Applicant.	Opposition No. 91233439
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**MOTION ON CONSENT TO SUSPEND PROCEEDINGS AND TO EXTEND  
DEADLINES IF OPPOSITION IS RESUMED**

Opposer, by and through counsel, and with Applicant’s consent, hereby moves for an order suspending the proceedings in this matter for a period of sixty (60) days, up to and including, **November 11, 2019**, and resetting all subsequent deadlines in this matter as follows:

Time to Answer	11/12/2019
Deadline for Discovery Conference	12/12/2019
Discovery Opens	12/12/2019
Initial Disclosures Due	01/12/2020
Expert Disclosures Due	05/10/2020
Discovery Closes	06/09/2020
Plaintiff's Pretrial Disclosures Due	07/24/2020
Plaintiff's 30-day Trial Period Ends	09/07/2020
Defendant's Pretrial Disclosures Due	09/22/2020
Defendant's 30-day Trial Period Ends	11/06/2020
Plaintiff's Rebuttal Disclosures Due	11/21/2020
Plaintiff's 15-day Rebuttal Period Ends	12/21/2020
Plaintiff's Opening Brief Due	02/19/2021
Defendant's Brief Due	03/21/2021

Plaintiff's Reply Brief Due	04/05/2021
Request for Oral Hearing (optional) Due	04/15/2021

The grounds for this request are as follows:

The parties have continued to engage in settlement discussions and have made significant progress since the last suspension. Specifically, since the last suspension request, the parties have had multiple discussions regarding settlement, and have discussed and resolved additional issues relating to use and registration of the opposed marks and related marks globally. The parties believe that at this stage the core terms have been agreed upon, and are reviewing a draft agreement embodying such terms. The parties have been working diligently working towards resolution and are continuing in this direction. However, additional time is needed to discuss the negotiated terms internally and with counsel, and for both sides to review the agreement and to revise accordingly.

The settlement discussions between the parties involve not only this proceeding, but also related marks subject to other proceeding before the Board. Although the range of marks and issues involved has complicated and lengthened the settlement discussions, the parties are close to reaching a global resolution to all of these matters. Opposer is also located in Australia, with its counsel in California, which has compounded the issues related to timing.

In view of the Board's July 16, 2019 order (32 TTABVUE), the parties attach as Exhibit A, a detailed report of the parties' discovery and settlement efforts listing: (1) all dates on which the parties communicated, (2) the method of each communication, (3) the general nature of each communication, (4) the issues that have been resolved, (5) the issues that remain to be resolved, and (6) a proposed timeline for resolution of the remaining issues.

The parties further request that the proceeding be suspended pending disposition of this motion. In the event that the Board denies this motion, Opposer requests an extension of the

deadlines by sixty (60) days after such denial.

Dated: New York, New York  
September 12, 2019

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.  
*Attorneys for Opposer*

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## Exhibit A

### I. PROGRESS REPORT OUTLINING SETTLEMENT NEGOTIATIONS

<u>Date of Communication</u>	<u>Method</u>	<u>Nature of Communication</u>
7/15/19	Phone call between parties	Response from Applicant with amended terms and related information regarding use and registration of various marks in various jurisdictions
7/18/19-7/25/19	Email and phone exchange between parties	Discussion between Applicant's counsel and Opposer's counsel regarding settlement
7/26/19	Phone call between parties	Discussion between Applicant's counsel and Opposer's counsel regarding settlement terms, and time frames
7/30/19	Email and phone exchange between parties	Discussion of outstanding settlement, related issues and deadlines
7/31/19-8/1/19	Email and phone exchanges	Email and phone communications between Opposer and Opposer's counsel regarding settlement issues. Communications between Applicant's counsel and Opposer's in-house counsel regarding settlement.
8/30/19	Phone call between parties	Phone communication between Opposer's in-house counsel and Applicant's counsel regarding settlement issues, including amendment to global applications, and dispute resolution provisions
9/5/19	Phone call between parties	Phone communication between Opposer's in-house counsel and Applicant's counsel regarding settlement issues
9/9/19	Email exchange	Exchange of draft settlement agreement between parties, and discussion of deadlines in related proceedings

### II. SETTLEMENT 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 in various jurisdictions;
- Various contract terms relating to performance, breach, representations and warranties; contract interpretations and related terms.

### III. SETTLEMENT 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:

- Language of agreement regarding above terms

### IV. PROPOSED TIMETABLE FOR RESOLUTION OF THE UNRESOLVED ISSUES

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

<b>Task</b>	<b>Due Date:</b>
Negotiations regarding language of agreement	10/16/2019
Complete follow-up on remaining and/or execute settlement agreement	11/22/2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on September 12, 2019, I caused a true and correct copy of the foregoing *Motion on Consent to Suspend Proceedings and to Extend Deadlines if Opposition is Resumed* to be sent via email to Applicant's Attorney and Correspondent of Record, Jennifer Lee Taylor, at jtaylor@mofo.com. An email copy was also been sent to tmdocket@mofo.com, MHuq@mofo.com.

Dated: September 12, 2019  
New York, NY

/Justin I. Karasick/  
Justin I. Karasick, Esq.