

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

August 15, 2019

Opposition No. 91235518

*Birds Eye Foods LLC*

*v.*

*Robert Wallace DBA Del Rio Vineyards, LLC*

**Lawrence T. Stanley, Jr., Interlocutory Attorney:**

Opposer's consented motion, filed August 12, 2019, to extend discovery and trial dates is **granted**.<sup>1</sup>

**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 or extend 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); TBMP §§ 510 and 605.02 (2019).

Due to the number of suspensions and extensions approved so 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

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<sup>1</sup> The notice of appearance and substitution of counsel for Opposer, filed June 26, 2019, is noted, and the proceeding file has been updated accordingly.

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 suspension or extension. The report must set forth, at a minimum, 1) all dates on which the parties have communicated about settlement since the last extension or suspension, 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).

Due to this requirement, the parties may no longer use the ESTTA “Consent Motions” forms to submit motions to extend or suspend dates for settlement. Rather, the parties must select the “Opposition, Cancellation or Concurrent Use (general filings)” option, the “Scheduling Motions” option, then the “Motion to Suspend for Settlement Discussions” form to which the parties may attach a motion they have prepared. The motion must set forth both the required status report and a proposed proceeding schedule.<sup>2</sup> The requirement to use the general filings ESTTA form is

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<sup>2</sup> 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. *See* Trademark Rule 2.121(d).

limited to consent motions based on settlement discussions, and does not prohibit the use of ESTTA consent forms for other filings.

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).

### **Proceeding Dates Reset**

Proceeding dates are reset in accordance with Opposer's motion as follows:

Expert Disclosures Due	12/24/2019
Discovery Closes	1/23/2020
Plaintiff's Pretrial Disclosures Due	3/8/2020
Plaintiff's 30-day Trial Period Ends	4/22/2020
Defendant's Pretrial Disclosures Due	5/7/2020
Defendant's 30-day Trial Period Ends	6/21/2020
Plaintiff's Rebuttal Disclosures Due	7/6/2020
Plaintiff's 15-day Rebuttal Period Ends	8/5/2020
Plaintiff's Opening Brief Due	10/4/2020
Defendant's Brief Due	11/3/2020
Plaintiff's Reply Brief Due	11/18/2020
Request for Oral Hearing (optional) Due	11/28/2020

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).