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

| | |
|------------------------|---|
| Proceeding | 91235518 |
| Party | Plaintiff Birds Eye Foods LLC |
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| Submission | Motion to Suspend for Settlement Discussions |
| Filer's Name | Michelle Alvey |
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| Signature | /Michelle Alvey/ |
| Date | 12/02/2019 |
| Attachments | DEL_RIO_33_MOTION_TO_EXTEND.pdf(11615 bytes) |

CERTIFICATE OF MAILING VIA ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals on December 2, 2019.

/Michelle Alvey/

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

| | | |
|----------------------------|---|-------------------------|
| BIRD’S EYE FOODS, LLC, |) | |
| |) | |
| Opposer. |) | |
| |) | Proceeding No. 91235518 |
| v. |) | |
| |) | |
| ROBERT WALLACE |) | |
| DBA DEL RIO VINEYARDS, LLC |) | |
| |) | |
| Applicant. |) | |

MOTION TO EXTEND DISCOVERY AND TRIAL DATES AND STATUS REPORT

Opposer Bird’s Eye Foods, LLC (“Opposer”), pursuant to TBMP §509, hereby requests that the discovery and trial dates be extended 60 days and in support thereof provides the following status report:

1. Prior counsel for Opposer and Applicant previously engaged in settlement negotiations in a good faith effort to resolve the matter and agreed to settlement terms subject to a mutually acceptable written settlement agreement. The settlement terms would address both use and registration of the mark at issue.
2. On October 3, 2018, prior counsel for Opposer sent a draft settlement agreement to Applicant.
3. Prior counsel for Opposer and Applicant requested and were granted several extensions in order to work to finalize an agreement.
4. On June 26, 2019 the undersigned counsel entered their appearance on behalf of Opposer as a result of the acquisition of Opposer’s business.

5. On July 2, 2019, new counsel for Opposer corresponded with Applicant to inquire about the status of Applicant's comments to the draft settlement agreement.

6. On July 11, 2019, counsel for Applicant, Kevin M. Hayes, notified counsel for Opposer that he had been retained to represent the Applicant in this matter and that he was reviewing the file and the draft agreement.

7. On August 7, 2019, Mr. Hayes provided a revised draft settlement agreement.

8. On August 12, 2019, the parties jointly requested an extension of the trial and discovery dates to allow Opposer time to review the revised agreement and such extension was granted by the Board.

9. Due to what Opposer believes are material changes to the settlement terms previously discussed by prior counsel and Applicant, Opposer required additional time to review the file and the new proposed terms and to provide a response to counsel for Applicant.

10. On September 30, 2019, counsel for Opposer provided substantive comments regarding the proposed material revisions to the settlement agreement.

11. Counsel for Applicant has not responded to Opposer's comments. In light of what Opposer believes to be material changes to the draft agreement, which suggests that the matter will not be resolved as previously believed, as well as the change of ownership and counsel for Opposer and the retention of counsel by Applicant, Opposer respectfully requests that there is good cause for an extension of time in order to prepare for trial.

12. Despite Opposer's request for consent to an extension, Applicant has refused to consent.

13. Accordingly, Opposer respectfully requests that the Board grant an extension of 60 days and that the deadlines be reset as follows:

| | Current Schedule | Proposed Schedule |
|---|------------------|-------------------|
| Expert Disclosures | 12/24/2019 | 2/22/2020 |
| Discovery Closes | 1/23/2020 | 3/23/2020 |
| Plaintiff's Pretrial Disclosures | 3/8/2020 | 5/7/2020 |
| Plaintiff's 30-day Trial Period Ends | 4/22/2020 | 6/21/2020 |
| Defendant's Pretrial Disclosures | 5/7/2020 | 7/6/2020 |
| Defendant's 30-day Trial Period Ends | 6/21/2020 | 8/20/2020 |
| Plaintiff's Rebuttal Disclosures Due | 7/6/2020 | 9/4/2020 |
| Plaintiff's 15-day Rebuttal Period Ends | 8/5/2020 | 10/4/2020 |
| Plaintiff's Opening Brief Due | 10/4/2020 | 12/3/2020 |
| Defendant's Brief Due | 11/3/2020 | 1/2/2021 |
| Plaintiff's Reply Brief Due | 11/18/2020 | 1/17/2021 |
| Request for Oral Hearing (optional) Due | 11/28/2020 | 1/27/2021 |

Respectfully submitted,

By: /Michelle Alvey/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing MOTION TO EXTEND DISCOVERY AND TRIAL DATES AND STATUS REPORT has been duly served by electronic mail, on this 2nd day of December 2019 to:

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