

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500  
General Email: [TTABInfo@uspto.gov](mailto:TTABInfo@uspto.gov)

LTS

May 14, 2020

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 May 12, 2020, to extend trial dates is **granted**.<sup>1</sup>

Trial dates are reset in accordance with Opposer's motion, as follows:<sup>2</sup>

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<sup>1</sup> On May 7, 2020, Opposer filed a consented motion to suspend for settlement. 42 TTABVUE. On August 15, 2019, the Board barred the parties from using the ESTTA consent form to submit any subsequent consented motion to extend or suspend dates pending settlement discussions. 37 TTABVUE 2-3. Opposer's May 7, 2020 motion was filed via ESTTA using the "Consent Form." Additionally, the request for suspension was not accompanied with a status report about the progress the parties have made towards their settlement efforts, as required by the Board's August 15, 2019 order. In view of Opposer's May 12, 2020 motion, Opposer's May 7, 2020 motion is moot. The parties are reminded that they are under a continued obligation to continue to update the Board with the status of progress the parties are making towards their settlement efforts, if further request for extension or suspension is filed. The said status must be a current progress report. In the absence of current status report, future motions for extension or suspension may be denied consideration, even if stipulated between the parties.

<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. Trademark Rule 2.121(d).

Plaintiff's Pretrial Disclosures Due	7/16/2020
Plaintiff's 30-day Trial Period Ends	8/27/2020
Defendant's Pretrial Disclosures Due	9/11/2020
Defendant's 30-day Trial Period Ends	10/26/2020
Plaintiff's Rebuttal Disclosures Due	11/10/2020
Plaintiff's 15-day Rebuttal Period Ends	12/10/2020
Plaintiff's Opening Brief Due	2/8/2021
Defendant's Brief Due	3/10/2021
Plaintiff's Reply Brief Due	3/25/2021
Request for Oral Hearing (optional) Due	4/4/2021

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, the manner and timing of taking testimony, matters in evidence, 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).