

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

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Mailed: October 18, 2017

Opposition No. **91236279**

Frito-Lay North America, Inc.

v.

Chef's Touch Sales and Marketing, LLC

Yong Oh (Richard) Kim, Interlocutory Attorney:

On September 29, 2017, Applicant filed a motion to dismiss the notice of opposition under Fed. R. Civ. P. 12(b)(6)¹ and the Board suspended this matter on October 2, 2017, as of the date of filing of the motion. The certificate of service attached to the filing certified service by “Express Overnight Mail”. However, pursuant to the amendments to the Board’s rules of practice (effective as of January 14, 2017), service of submissions filed with the Board and any other papers served on a party not required to be filed with the Board must be made by email unless the parties have stipulated otherwise or if the serving party can show by written explanation accompanying the submission or paper, or in a subsequent amended certificate of service that service by email was attempted but could not be made due to technical problems or extraordinary circumstances. *See* Trademark Rule 2.119(b).

¹ An answer was concurrently filed with the motion.

On October 16, 2017, Applicant re-filed and re-served its answer and motion to dismiss, noting that it “misunderstood the current requirement for email service” and that it seeks “to correct the error by follow up email service on October 16, 2017 to the Attorney of Record for the Opposing Party” *Applicant’s Correction of Service*, 7 TTABVUE 2.

Although the answer and motion were improperly served and, therefore, need not be considered, the Board declines to find Applicant in default in view of the Board’s suspension of this matter. Moreover, in view of the amended certificates of service filed on October 16, 2017, Opposer’s time to respond to the motion to dismiss is **RESET** and will be calculated based on the **new service date of October 16, 2017**. See Trademark Rule 2.127(a).

Proceedings remain **SUSPENDED** pending disposition of Applicant’s motion to dismiss.

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