

ESTTA Tracking number: **ESTTA1026064**

Filing date: **12/31/2019**

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

Proceeding	91238728
Party	Plaintiff Birds Eye Foods LLC
Correspondence Address	MICHELLE ALVEY HUSCH BLACKWELL LLP 190 CARONDELET PLAZA SUITE 600 ST LOUIS, MO 63105 UNITED STATES Michelle.alvey@huschblackwell.com, mike.tolles@huschblackwell.com, alan.nemes@huschblackwell.com, Petrina.bailey@huschblackwell.com, ptosl@huschblackwell.com 314-480-1500
Submission	Stipulated/Consent Motion to Extend
Filer's Name	Michelle Alvey
Filer's email	michelle.alvey@huschblackwell.com, pto-sl@huschblackwell.com, nicole.anderson@huschblackwell.com
Signature	/Michelle Alvey/
Date	12/31/2019
Attachments	MOTION_TO_EXTEND_AND_STATUS_REPORT.pdf(34431 bytes )

CERTIFICATE OF MAILING

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 31, 2019.

/Michelle Alvey/

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

Application Serial Nos. 87168679, 87168692

BIRDS EYE FOODS LLC,	)	
	)	
Opposer	)	Opposition No. 91238728
	)	
v.	)	
	)	
PARIS CROISSANT CO., LTD.,	)	
	)	
Applicant	)	

**CONSENT MOTION TO EXTEND FOR SETTLEMENT DISCUSSIONS  
AND STATUS REPORT**

The parties hereby submit the following Consent Motion for Extension and Status Report.

The history of the discussions and the recent updates are set forth below. Further, as noted in the prior status reports, due to a change in legal representation for Opposer and the fact that the Applicant is located in S. Korea, the parties have required additional time to conduct the settlement discussions and to exchange a written draft agreement and comments regarding the draft agreement. The parties would appreciate the Board's understanding in continuing to grant extensions as needed while the parties work to resolve this matter.

**STATUS REPORT**

The parties communicated various settlement offers and positions as follows:

- Feb. 1, 2018, email from Applicant's counsel to Opposer's prior counsel regarding settlement March 14, 2018 – discovery conference conducted by phone between Applicant's counsel and Opposer's prior counsel
- March 27, 2018 – email from Opposer's prior counsel to Applicant's counsel regarding settlement
- May 4, 2018, email from Applicant's counsel to Opposer's prior counsel regarding settlement
- August 17, 2018 - email from Opposer's prior counsel to Applicant's counsel regarding settlement
- August 29, 2018 - email from Applicant's counsel to Opposer's prior counsel regarding settlement
- November 28, 2018 – telephone discussion with Applicant's counsel and Opposer's prior counsel regarding settlement
- Dec. 17, 2018, email from Applicant's counsel to Opposer's prior counsel regarding settlement
- March 1, 2019 - email from Applicant's counsel to Opposer's prior counsel regarding request for status update on latest settlement position
- March 21, 2019 - email from Opposer's prior counsel to Applicant's counsel regarding settlement
- May 1, 2019 - email from Applicant's counsel to Opposer's prior counsel regarding request for Opposer's prior counsel to prepare written settlement agreement for review
- June 13, 2019 - email from Opposer's prior counsel to Applicant's counsel regarding notification that Opposer was purchased by Conagra and new counsel would be appointed

- June 26, 2019 – new counsel for Opposer entered an appearance and notified Applicant's counsel that a written settlement agreement was being prepared for review
- July 5, 2019 – The parties filed a joint motion to extend the deadlines to provide time for new counsel for Opposer to review the file and prepare a draft settlement agreement
- July 12, 2019 – The motion was granted by the Board
- August 13, 2019 – Counsel for Opposer sent a draft settlement agreement to counsel for Applicant for review and comments
- Sept. 4, 2019 – The parties filed a joint motion to extend the deadlines to provide time for Applicant to review and comment on the draft settlement agreement
- Sept. 10, 2019 – The motion was granted by the Board
- November 4, 2019 - The parties filed a joint motion to extend the deadlines to provide time for Applicant to review and comment on the draft settlement agreement
- Applicant required some time to review the draft agreement. In general, a settlement agreement such as the one discussed herein does take additional time to consider for Applicant, as (a) Applicant is located in S. Korea; (b) Applicant is working with local counsel and with U.S. counsel; and (c) the draft agreement is in English, whereas Applicant's first language is Korean; therefore, it takes some time for Applicant to work through an agreement regarding its trademarks (which involves four trademarks, which are the subject of this Opposition No. 91238728 and Opposition No. 91243391
- November 25, 2019 - The motion was granted by the Board and Applicant provided its comments to the draft agreement on this date
- Due to the holidays and also the proposed revisions made by Applicant, which Opposer believes to include a substantive revision, Opposer requires some time to provide its response to Applicant

The general nature of each communication above consisted of various points of a proposed written settlement agreement that would result in registration of Applicant's marks with revised goods/services and withdrawal of opposition by Opposer. The parties will continue to actively work towards a final resolution of the matter. Applicant and Opposer have conferred with regard to the content of this Consent Motion for Extension and Status Report, and Opposer has consented to the relief requested. The Parties request that the deadlines in this proceeding be extended for 60 days to

allow the parties to work on a written settlement agreement. The parties request a 60 day extension, and that the deadlines be reset as follows:

	Current Schedule	Proposed Schedule
Initial Disclosures Due	01/03/2020	03/03/2020
Expert Disclosures Due	05/02/2020	07/01/2020
Discovery Closes	06/01/2020	07/31/2020
Plaintiff's Pretrial Disclosures Due	07/16/2020	09/14/2020
Plaintiff's 30-day Trial Period Ends	08/30/2020	10/29/2020
Defendant's Pretrial Disclosures Due	09/14/2020	11/13/2020
Defendant's 30-day Trial Period Ends	10/29/2020	12/28/2020
Plaintiff's Rebuttal Disclosures Due	11/13/2020	01/12/2021
Plaintiff's 15-day Rebuttal Period Ends	12/13/2020	02/11/2021
Plaintiff's Opening Brief Due	02/11/2021	04/12/2021
Defendant's Brief Due	03/13/2021	05/12/2021
Plaintiff's Reply Brief Due	03/28/2021	05/27/2021
Request for Oral Hearing (optional) Due	04/07/2021	06/06/2021

Respectfully submitted,

By: Michelle Alvey  
 Michelle Alvey  
 Alan S. Nemes  
 Michael J. Tolles  
 HUSCH BLACKWELL LLP  
 The Plaza in Clayton Office Tower  
 190 Carondelet Plaza, Suite 600  
 St. Louis, MO 63105  
 Telephone: (314) 345-6000

*Attorneys for Opposer.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been duly served on the Applicant by mailing a copy of same via electronic mail on this 31<sup>st</sup> day of December 2019 to:

MIRIAM TRUDELL  
SHERIDAN ROSS PC  
1560 BROADWAY, SUITE 1200  
DENVER, CO 80202  
mtrudell@sheridanross.com

*Attorney for Applicant.*

*/Michelle Alvey/*