UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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kds/ky

June 13, 2025

Opposition No. 91247473

Latinfood U.S. Corp. d/b/a/ Zenu Products, Inc.

v.

Industria De Alimentos Zenu S.A.S

Katerina D. Sparer, Interlocutory Attorney:

On April 8, 2025, the parties were allowed time in which to inform the Board of the status of the civil action which occasioned the suspension of this proceeding (i.e., Case No. 2:16-cv-06576-KM-MAH, filed in the United States District Court for the District of New Jersey). 33 TTABVUE; 9 TTABVUE 1. No response to the Board's order was received. Accordingly, proceedings herein were resumed on May 20, 2025. 34 TTABVUE. That same day, the Board received a paper filing from Applicant's counsel. 35 TTABVUE.

Trademark Rule 2.126(a) states that submissions must be made to the Board via the Electronic System for Trademark Trials and Appeals (ESTTA). *See* TBMP § 110.01. Trademark Rule 2.126(b) states, in pertinent part (emphasis added):

> In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, submissions may be filed in paper form. All submissions in paper form, except the extensions of time to file a notice of opposition, the notice of opposition, the petition to cancel, or answers thereto (*see* §§ 2.101(b)(2), 2.102(a)(2), 2.106(b)(1),

> 2.111(c)(2), and 2.114(b)(1)), must include **a written explanation** of such technical problems or extraordinary circumstances. Paper submissions that do not meet the showing required under this paragraph (b) will not be considered.

Additionally, Trademark Rule 2.119 requires that, except for the notice of opposition or the petition to cancel, every submission filed in an inter partes proceeding before the Board must be served by the filing party upon every other party to the proceeding. *See* TBMP § 113.01. Proof that the required service has been made ordinarily must be submitted before the filing will be considered by the Board. TBMP § 113.02 and authorities cited therein. If email service is not possible because of technical problems or extraordinary circumstances and there is no stipulation, the serving party must show by written explanation accompanying the submission or paper that email service was attempted but could not be made.

"Proof of service" usually consists of a signed, dated statement attesting to the following matters: (1) the title or nature of the submission being served, (2) the method of service (i.e., electronic mail), (3) the person being served and the email address used to effect service, and (4) the date of service. This written statement should take the form of a signed and dated "certificate of service," which should read as follows:

> The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon Opposer by forwarding said copy, via email to: [insert email address].

Applicant's submission does not include a written explanation that ESTTA was unavailable due to technical problems or that extraordinary circumstances prevented

filing through ESTTA, nor does it include **proof** of service on the opposing party. Accordingly, the submission is not accepted and will be given **no consideration**.[1]

Notwithstanding the foregoing, because the civil action which occasioned the suspension of this proceeding remains ongoing, proceedings herein are **suspended** pending final determination thereof. *See* Trademark Rule 2.117(a). *Cf.* TBMP § 510.02(a) ("Suspension of a Board proceeding pending the final determination of another proceeding is solely within the discretion of the Board.").

Within **twenty days after such final determination**, the parties shall notify the Board so that this proceeding may be called up for appropriate action.[2] Such notification to the Board should include a copy of any final order or final judgment which issued in the civil action.

During the suspension period, the parties shall notify the Board of any address or email address changes for the parties or their attorneys.

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[1] Applicant is reminded that it must maintain a current and accurate correspondence address with the Board, as required by Trademark Rule 2.23, and that, if its correspondence address changes, a request to change the address, signed in accordance with Trademark Rule 2.193(e)(9), must be promptly filed. *See* Trademark Rule 2.18(c).

[2] A proceeding is considered to have been finally determined when an order or ruling that ends litigation has been rendered, and no appeal has been filed, or all appeals filed have been decided and the time for any further review has expired. *See* TBMP § 510.02(b).