

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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January 21, 2021

Opposition No. 91252783

Wakefern Food Corp.

v.

Dillard's, Inc.

Kelly Young, Paralegal Specialist:

Applicant's consented motion filed January 12, 2021 to extend time to file an answer to the notice of opposition and to extend conference, disclosure, discovery and trial dates, is granted.¹ Trademark Rule 2.127(a).

Report Required for Future Motions to Suspend or Extend for Settlement

The Board retains discretion to condition the approval of a consented or stipulated motion to suspend on the party or parties providing necessary information about the status of settlement talks, discovery activities, or trial activities, as may be appropriate. *See* Trademark Rule 2.117(c); TBMP §§ 510 and 605.02.

¹ 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).

Due to the number of suspensions or extensions approved thus far in this proceeding, the Board imposes a condition on the approval of all future motions to suspend or extend for settlement. Specifically, to establish good cause for all future motions to suspend or extend, the parties must include in the motion a status report setting forth what specific efforts the parties have made towards settlement during the previous period of suspension or extension. The report must set forth, at a minimum, 1) all dates on which the parties communicated, and the method of each communication (*e.g.* telephone conferences, emails, in-person meetings), 2) the general nature of each communication, 3) the issues that have been resolved, 4) the issues that remain to be resolved or that remain for trial, and 5) a proposed timetable for resolution of the remaining issues. Appropriately designated confidential information or materials may be filed under seal pursuant to Trademark Rule 2.126(c). *See* TBMP § 605.02.

Due to this requirement, the parties may no longer use the ESTTA “Consent Motions” forms to submit motions to extend or suspend dates for settlement. Rather, the parties must select the “Opposition, Cancellation or Concurrent Use (general filings)” option, the “Scheduling Motions” option, then the “Motion to Suspend for Settlement Discussions” form to which the parties may attach the motion they prepared. The motion must set forth both the required status report and a proposed trial schedule.² The requirement to use the general filings ESTTA form is limited to

² 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

consent motions based on settlement discussions, and does not prohibit the use of ESTTA consent forms for other filings.

Absent the required status report, a motion to suspend or extend may be denied, even if consented to by the parties. If the Board denies such a motion, dates may remain as previously set. *See* TBMP § 509.01(a).

Answer is due March 13, 2021. An answer must be filed through ESTTA, the Board's Electronic System for Trademark Trials and Appeals. *See* Trademark Rule 2.106(b)(1).

The conference, disclosure, discovery and trial dates are reset in accordance with Applicant's motion as follows:

Time to Answer	3/13/2021
Deadline for Discovery Conference	4/12/2021
Discovery Opens	4/12/2021
Initial Disclosures Due	5/12/2021
Expert Disclosures Due	9/9/2021
Discovery Closes	10/9/2021
Plaintiff's Pretrial Disclosures Due	11/23/2021
Plaintiff's 30-day Trial Period Ends	1/7/2022
Defendant's Pretrial Disclosures Due	1/22/2022
Defendant's 30-day Trial Period Ends	3/8/2022
Plaintiff's Rebuttal Disclosures Due	3/23/2022
Plaintiff's 15-day Rebuttal Period Ends	4/22/2022
Plaintiff's Opening Brief Due	6/21/2022
Defendant's Brief Due	7/21/2022
Plaintiff's Reply Brief Due	8/5/2022
Request for Oral Hearing (optional) Due	8/15/2022

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

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).

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).

TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. **Note:** Parties are strongly encouraged to check the entire document before filing.³ The Board will not extend or reset proceeding schedule dates or other deadlines to allow

³ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.

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time to re-file documents. For more tips and helpful filing information, please visit the [ESTTA help](#) webpage.