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Filing date: **09/27/2024**

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

Proceeding no.	91267206
Party	Plaintiff Freestyle Brands, LLC
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Submission	Motion to Suspend for Settlement Discussions
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Signature	/molly crandall/
Date	09/27/2024
Attachments	Joint Settlement Progress Report and Joint Consent Motion for 180 Suspension in Opp No 91267206.pdf(89928 bytes )

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

In re Trademark Application

Serial No.: 88530086

Filed: July 23, 2019

Trademark: **BABY SHARK**

Atty. Docket No.: FSTB0144OC

Published in the *Official Gazette* on July 28, 2020

FREESTYLE BRANDS, LLC, )  
 )  
           Opposer, )  
 )  
           v. )  
 )  
 THE PINKFONG COMPANY, INC. )  
 F/K/A SMART STUDY CO., LTD. )  
 )  
           Applicant. )

Opposition No. 91267206

**JOINT SETTLEMENT PROGRESS REPORT AND  
JOINT CONSENT MOTION FOR 180 SUSPENSION OF OPPOSITION**

Pursuant to Trademark Rule 605.02, Opposer and Applicant hereby state:

Action on this proceeding in Opposition No. 91267206 resumed on September 14, 2024.

The parties submitted a consent motion to further suspend action on the proceeding on September 16, 2024, but the request was denied because it inadvertently did not include a detailed report of the parties' settlement efforts in order to demonstrate good cause for the motion to suspend. The parties hereby submit a new motion for suspension supported by the required report on the progress of settlement discussions. Pursuant to Trademark Rule 605.02, the parties are not required to disclose any confidential information in this report, but must state a summary of the progress of

the parties' negotiations and an anticipated timetable for resolution. The parties first state that all of their communications referenced below were made between the parties by email, which is their normal means of communication. There appears to be approximately two to three main issues remaining for which the parties are still discussing. And, the parties are hopeful the remaining issues will be resolved within the next 180 days (six months).

**A detailed report of the parties' settlement efforts so far is summarized below. The lines shown in red reflect the time the Opposition was suspended pending disposition of civil action, during which time, settlement discussions continued:**

January 22, 2021: Opposition filed and instituted.

February 2021 to November 2021: Parties discussed settlement, but then entered a civil action in early-mid 2022. Settlement discussions continued.

June 20, 2021: Pinkfong filed an Answer in the Opposition proceeding.

May 13, 2022: Consented motion to suspend pending civil action filed and granted on May 13, 2022. The Opposition remained suspended for almost two years. During that time, the parties continued to discuss agreeable coexistence terms.

November 9, 2023: Freestyle Brands forwarded counter-terms for settlement to Pinkfong for review.

November 11 to November 21, 2023: Pinkfong and Freestyle exchanged emails to clarify the latest terms, and the parties agreed to withdraw their respective actions (opposition and non-use actions) in Brazil given the settlement negotiations.

December 5, 2023: Freestyle Brands contacted Pinkfong for a reply to the counter-terms sent on November 9, 2023.

December 20, 2023: Pinkfong reverted with another set of changes to the proposed agreement terms.

January 11, 2024: Pinkfong agreed not to file a declaratory judgment action in the U.S. against Freestyle in exchange for Freestyle's agreement to dismiss the U.S. federal court action against Pinkfong's BABY SHARK mark without prejudice. The U.S. federal court action was dismissed without prejudice.

February 1, 2024: Freestyle and Pinkfong notified the U.S. Trademark Trial and Appeal Board that the U.S. civil action was dismissed, and filed a motion to reopen discovery in the

Opposition. Concurrently, Freestyle returned proposed changes to the draft settlement terms to Pinkfong for review.

February 23, 2024: Pinkfong returned comments and edits to the proposed settlement terms for Freestyle review.

March 26, 2024: The Opposition proceedings were resumed, and the parties agreed to suspend action on the US Opposition pending settlement negotiations.

April 15, 2024: Freestyle returned the draft settlement terms to Pinkfong with proposed edits for review.

May 16, 2024: Pinkfong returned the draft settlement terms to Freestyle with additional edits to the settlement terms, and Freestyle is now reviewing.

July 9, 2024: Freestyle reviewing the latest counter-terms from Pinkfong.

July 11, 2024: Freestyle returned proposed changes to the draft settlement terms to Pinkfong for review.

August 8, 2024: Pinkfong returned proposed edits to the settlement terms to Freestyle and indicates "we seem close."

August 11 to 22, 2024: Freestyle counsel out for wedding and honeymoon, and the parties agree to a further suspension.

August 30, 2024: Freestyle accepted a majority of the proposed edits and returned some additional proposed changes.

September 11, 2024: Counsel for the parties agreed to a further 30 day suspension to the Opposition proceeding to allow time to go over the last remaining terms.

September 16, 2024: Pinkfong counsel responded to Freestyle with a few proposed changes to the coexistence terms.

September 16, 2024: Freestyle filed a consent motion for a 30 day suspension of the proceedings to allow time to finalize the negotiations.

September 19, 2024: The Board denied without prejudice the consent motion for a 30 day suspension filed on September 16, 2024, and required the parties to provide a detailed report of the parties' settlement efforts in order to demonstrate good cause for any future motion to extend or suspend.

September 20, 2024: Freestyle's counsel forwarded the proposed changes with comments to its client for consideration.

September 26, 2024: The parties prepared a detailed report of their settlement efforts so far to demonstrate good cause for the suspension request.

The parties submit that there is good cause to further suspend the proceedings for 180 days because the parties have been negotiating settlement in good faith, have significantly reduced the open issues, and anticipate a resolution within the next six months.

While this opposition proceeding was instituted at the Board in January 2021, almost two years of this time was spent suspended pending disposition of a civil action in federal court. During that time, the parties' both withdrew their respective actions related to this mark in Brazil. The parties then agreed to dismiss the U.S. civil action in favor of coexistence, and these Board proceedings were just resumed on March 26, 2024 - just six months ago. The parties are still negotiating for settlement and wish to defer further litigation of the case pending conclusion of their negotiations.

Based on the foregoing report, Opposer and Applicant respectfully request the Board grant a 180 day suspension of the Opposition proceeding to allow time for the parties to amicably resolve the matter without litigation, and jointly submit the below proposed trial schedule:

Proceedings Resume: 3/27/2025

Initial Disclosures Due	4/9/2025
Expert Disclosures Due	8/7/2025
Discovery Closes	9/5/2025
Plaintiff's Pretrial Disclosures Due	10/20/2025
Plaintiff's 30-day Trial Period Ends	12/4/2025
Defendant's Pretrial Disclosures Due	12/19/2025
Defendant's 30-day Trial Period Ends	2/2/2026
Plaintiff's Rebuttal Disclosures Due	2/17/2026
Plaintiff's 15-day Rebuttal Period Ends	3/19/2026
Plaintiff's Opening Brief Due	5/18/2026
Defendant's Brief Due	6/17/2026
Plaintiff's Reply Brief Due	7/2/2026
Request for Oral Hearing (optional) Due	7/12/2026

Based on the above, Opposer and Applicant submit there is good cause to further suspend action on the Opposition, and jointly and respectfully move the Board to grant a 180 day suspension of the Opposition proceedings.

Respectfully submitted,

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Mark Cantor  
*Attorneys/Agents for Opposer*

By: /Jason Drangel/  
Jason M. Drangel  
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Date: September 26, 2024

Date: September 27, 2024

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