

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  
General Email: [TTABInfo@uspto.gov](mailto:TTABInfo@uspto.gov)

EJW

June 1, 2021

Opposition No. 91267373

*Nature's Bakery, LLC*

*v.*

*The Fynder Group, Inc.*

**ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:**

**I. Motion to Divide**

On February 11, 2021, Applicant filed a motion to divide the involved application, Serial No. 88812151, such that (i) the unopposed goods in International Class 5 and (ii) International Classes 29, 30, 31 and 32 in their entirety are divided into a separate application. 4 TTABVUE. Applicant has authorized the Intent to Use Division of the Trademarks Organization of the USPTO to charge the required request to divide fee for the child application. *See* Trademark Rule 2.87(b); TBMP § 516 (2021). Applicant's motion is unopposed.

In view of the foregoing, Applicant's motion to divide is **granted**. *See* Trademark Rule 2.127(a). Accordingly, application Serial No. 88812151 will be **DIVIDED** into a "parent" application (the current opposition proceeding) to include the opposed goods identified in International Class 5 (i.e., "protein supplements formed and packaged

as bars; protein supplements; protein dietary supplements formed and packaged as bars.”), and a “child” application to include the unopposed goods in International Class 5 and International Classes 29, 30, 31 and 32 in their entirety. *See* TMEP § 1110 and Trademark Rule 2.87.

The new application to be created that includes the remaining goods in International Class 5 and in International Classes 29, 30, 31 and 32 will be forwarded to the Publication and Issue section of the USPTO for further appropriate action.

## **II. Proceeding Suspended**

On May 5, 2021, Applicant filed a motion for summary judgment. 6 TTABVUE. The motion is timely pursuant to Trademark Rule 2.127(e)(1).

When a party timely files a potentially dispositive motion, the proceeding is suspended with respect to all matters not germane to the motion, and no party should file any paper which is not germane to the motion except as otherwise may be specified in a Board order. *See* Trademark Rule 2.127(d). Accordingly, as of the filing date of the motion for summary judgment, proceedings are **SUSPENDED** pending disposition of the motion. Any paper filed during the pendency of this motion that is not germane thereto will be given no consideration. *See* Trademark Rule 2.127(d).

In addition to tolling the time to respond to outstanding discovery requests, suspension of proceedings tolls the time for parties to make required disclosures. *See* TBMP § 528.03.

The motion for summary judgment will be decided in due course.<sup>1</sup>

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<sup>1</sup> The suspension for the motion for summary judgment does not affect the child application to be created as a result of the foregoing order.