

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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ajl/tdc

September 22, 2023

Opposition No. 91275139

*ADM WILD Europe GmbH & Co. KG and
WILD Flavors, Inc.*

v.

Kerry Luxembourg S.à.r.l.

Ashlyn Lembree, Interlocutory Attorney:

The Board notes Applicant's August 29, 2023 response to the Board's August 4, 2023 notice of default and show cause order; said response includes a motion to set aside the notice of default and consented motion to suspend proceedings for sixty days. 27, 28 TTABVUE.

The Board construes the parties' consented motion to suspend for settlement to include a consent motion to set aside the notice of default. Furthermore, Applicant states that the parties have settled this opposition by entering into a coexistence settlement agreement which has been fully executed by both parties and which requires further settlement activities in the nature of the confirmation of Applicant's amendments to certain UK and European trademark registrations being formally entered and Opposer's subsequent withdrawal of notice of opposition. The construed motion to set aside the Board's notice of default is **granted**. *See Fred Hayman Beverly*

Hills, Inc. v. Jacques Bernier, Inc., 21 USPQ2d 1556, 1557 (TTAB 1991) (The decision whether to enter default judgment is within the Board’s discretion.); *see also Paolo’s Assoc. Ltd. P’ship v. Bodo*, 21 USPQ2d 1899, 1902 (Comm’r 1990) (The Board is mindful of its policy to decide cases on their merits where possible and therefore only reluctantly enters judgment by default for failure to timely answer.); *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 312.02 (2023).

Notwithstanding the ruling to set aside default, Applicant and its counsel are advised to adhere to all deadlines, including discovery and trial deadlines, and are expected to remain abreast of this proceeding through utilizing TTABVUE. *See* TBMP § 110.01.

SUSPENSION

Because the parties are actively engaged in settlement activities for the settlement of this case, proceedings are suspended, subject to the right of either party to request resumption at any time.¹ *See* Trademark Rules 2.117(c) and 2.127(a); and TBMP § 605.02.

If, during the suspension period, either of the parties or their attorneys have a change of address or email address, the Board should be so informed. *See* Trademark Rule 2.18(b)(1).

¹ The parties should note that if proceedings are suspended for a lengthy period of time pursuant to the filing of several motions to suspend for settlement, the Board retains discretion to condition the approval of any future consented or stipulated motion to suspend on a party or the 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).

In the event that there is no word from either party concerning the progress of their settlement activities, upon conclusion of the suspension period, **proceedings shall resume without further notice or order from the Board**, upon the schedule set forth below.²

An answer must be filed through ESTTA, the Board's Electronic System for Trademark Trials and Appeals. *See* Trademark Rule 2.106(b)(1). Conferencing, disclosure, discovery, and trial dates are reset as follows:

Proceedings Resume: 11/21/2023

Time to Answer	11/22/2023
Deadline for Discovery Conference	12/22/2023
Discovery Opens	12/22/2023
Initial Disclosures Due	1/21/2024
Expert Disclosures Due	5/20/2024
Discovery Closes	6/19/2024
Plaintiff's Pretrial Disclosures Due	8/3/2024
Plaintiff's 30-day Trial Period Ends	9/17/2024
Defendant's Pretrial Disclosures Due	10/2/2024
Defendant's 30-day Trial Period Ends	11/16/2024
Plaintiff's Rebuttal Disclosures Due	12/1/2024
Plaintiff's 15-day Rebuttal Period Ends	12/31/2024
Plaintiff's Opening Brief Due	3/1/2025
Defendant's Brief Due	3/31/2025
Plaintiff's Reply Brief Due	4/15/2025
Request for Oral Hearing (optional) Due	4/25/2025

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 periods. The parties may stipulate to a wide variety of matters, and many

² If the parties are (or during the pendency of this proceeding become) parties to another proceeding involving the subject application/registration, the parties must notify the Board so the Board can consider whether consolidation or suspension of proceedings is appropriate.

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.