

ESTTA Tracking number: **ESTTA1333193**Filing date: **01/10/2024**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91278510
Party	Plaintiff Daniel Baum Company
Correspondence address	BARTH X. DEROSA BELZER PC 2905 BULL STREET SAVANNAH, GA 31405 UNITED STATES Primary email: bderosa@belzerlaw.com Secondary email(s): rwomack@belzerlaw.com, paralegal@belzerlaw.com 202-408-5955
Submission	Stipulated/Consent Motion to Extend
Filer's name	Barth X deRosa
Filer's email	bderosa@belzerlaw.com
Signature	/barth xavier derosa/
Date	01/10/2024
Attachments	135-147 Second Consented Motion for Enlargement of Time to Respond to Second Motion to Dismiss.pdf(116316 bytes )

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

---

**DANIEL BAUM COMPANY,**

**Opposer,**

v.

Opposition No. 91278510

**BENEFICIAL BIOME SOLUTIONS, INC.**  
**Applicant.**

Application Ser. No. 90/197,510

---

**SECOND CONSENTED MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO  
APPLICANT’S SECOND MOTION TO DISMISS FIRST AMENDED NOTICE OF  
OPPOSITION FOR FAILURE TO STATE A CLAIM**

Opposer, Daniel Baum Company, with consent of Applicant’s attorney, Charles McCloskey, hereby stipulate to an additional one-month Enlargement of Time for Opposer to Respond to Applicant’s Second Motion to Dismiss First Amended Notice of Opposition for Failure to State a Claim that was filed on September 11, 2023. [21 TTABVUE 1-11].

At present, Opposer’s Response to the Applicant’s Motion is presently due on or before January 15, 2024 by Consent between the Parties and as approved by Order of the Board. Accordingly, the parties stipulate to a further one-month enlargement, namely, up to and including February 15, 2024 for Opposer to file its response to the Second Motion to Dismiss, and/or to make such other motions that might be deemed necessary.

The purpose of the enlargement is to permit additional time while the parties “engage” in settlement discussions and also, more importantly, to determine whether the Applicant still has an intent to use the FORTITUDE mark as set forth in its application and in defending against the Notice of Opposition.

In this connection, based on a telephonic conference with Applicant’s counsel dated January 5, 2024, Applicant’s counsel indicated:

1. That despite a number of calls and emails to his client over the past few months, he has not been able to contact his client by phone, nor has he received a response to his various emails and telephonic messages;
2. There is no longer a URL associated with his client’s website at [www.beneficialbiome.com](http://www.beneficialbiome.com);
3. As a consequence, his client’s website is no longer active and/or operational;
4. That based on these developments, counsel for the parties believed it prudent to permit an additional month to see if Applicant’s counsel proves successful in contacting his client before a Motion to Show Cause might be filed by Opposer to determine if Applicant still has an interest in defending the Notice of Opposition and an intent to use the subject mark.

Applicant’s consent was secured by telephone discussion had on January 5, 2024.

In the event this Consented Motion should be denied, Opposer respectfully requests that it be given sufficient time to respond to Applicant’s Second Motion to Dismiss from the date of such denial.

In view thereof, further action is solicited.

Respectfully submitted,

DANIEL BAUM COMPANY

/Barth X. deRosa/

---

Barth X. deRosa  
BELZER PC  
2905 Bull Street  
Savannah, GA 31405  
Direct: 202-408-5955  
General: 912-236-3001  
Fax: 912-236-3003  
[bderosa@belzerlaw.com](mailto:bderosa@belzerlaw.com)  
Counsel for Opposer

## CERTIFICATE OF SERVICE

Pursuant to TBMP Section 113, TTAB Rule 2.119(a) and the Federal Rule of Civil Procedure 4 (h)(1), Attorney for Opposer certifies that a true copy of the foregoing Second Consented Motion for Enlargement of Time to Respond to Applicant's Second Motion to Dismiss First Amended Notice of Opposition for Failure to State a Claim was served on the below party by email this January 10, 2024:

Charles McCloskey  
13321 N. Outer 40 Rd, Ste. 100  
Town & Country, MO 63017-5945  
Email: [chuck@mccloskeypatentlaw.com](mailto:chuck@mccloskeypatentlaw.com)  
Attorney for Applicant

By: /Barth X. deRosa/  
Attorney for Opposer