

ESTTA Tracking number: **ESTTA85142**

Filing date: **06/13/2006**

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

Proceeding	92032976
Party	Plaintiff SCHWAN'S SALES ENTERPRISES, INC.; SCHWANIP, LLC AND SSE FOODS, INC.
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Submission	Opposition/Response to Motion
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Date	06/13/2006
Attachments	rising crust.pdf (4 pages)(130868 bytes)

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

Schwan's Sales Enterprises, Inc.)	
Schwan's IP, LLC, and)	Cancellation No. 92032976
SSE Foods, Inc.,)	
)	Mark: RISING CRUST
Petitioners,)	
)	Registration No. 2,076,043
v.)	
)	Filed: October 4, 1994
Kraft Pizza Company,)	
)	Registration Date: July 1, 1997
Registrant.)	
)	

PETITIONERS' RESPONSE TO MOTION TO SUSPEND PROCEEDINGS

Petitioners Schwan's Sales Enterprises, Inc., Schwan's IP, LLC, and SSE Foods, Inc. (hereinafter "Schwan's"), herein respond to Kraft's motion to suspend the cancellation action pending the Board's resolution of Kraft's motion for protective order. While Schwan's is concerned about delay in the case, Schwan's consents to the relief requested by Kraft. Schwan's does request that the Board resolve (and deny) Kraft's pending motion for protective order as soon as possible so that the parties can resume the present proceedings.

By way of background, Schwan's served discovery on Kraft on February 7, 2005, seeking information and documents regarding generic use of the term "rising crust," among other issues. (Docket Nos. 14-16.) After some discussions between the parties, Kraft, on April 13, 2005, filed a motion for a protective order to preclude Schwan's from receiving the necessary discovery. (Docket No. 21.) Schwan's opposed this motion because the discovery sought is directly relevant on the issue of whether the term "rising crust" is generic.


Thereafter, Schwan's filed a motion for summary judgment on May 5, 2005. This motion requested the Board find the term "rising crust" generic, which is the very same issue for which Schwan's sought discovery regarding and obtained no answers. (Docket No. 28.) The Board suspended the case, indicating that it would take up the summary judgment motion and also resolve the pending discovery motion. As noted by Kraft, the Board's May 17, 2006 order did not address the pending discovery dispute. (Docket No. 41.)

Suspension of this cancellation proceeding is appropriate pending resolution of the Kraft's discovery motion. For the reasons previously stated in Schwan's response to Kraft's Motion for a Protective Order, Schwan's requests that the Board act expeditiously to deny Kraft's motion and order Kraft to produce the requested materials and responses forthwith for use by Schwan's during the testimony periods.

Respectfully submitted,

SCHWAN'S SALES ENTERPRISES, INC.,
SCHWAN'S IP, LLC, and
SSE FOODS, INC.

By their attorneys,



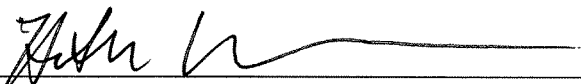
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing PETITIONERS' RESPONSE TO REGISTRANT'S MOTION TO SUSPEND PROCEEDINGS was served upon the following attorneys of record for Registrant by First Class Mail, this 13th day of June, 2006:

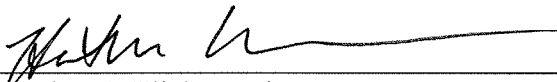
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Heather J. Kliebenstein

CERTIFICATE OF MAILING

I hereby certify that this PETITIONERS' RESPONSE TO REGISTRANT'S MOTION TO SUSPEND PROCEEDINGS is being deposited with the U.S. Postal Service by First Class Mail, in an envelope addressed to the Commissioner for Trademarks, Attn: T.T.A.B., P.O. Box 1451, Alexandria, VA 22313-1451, this 13th day of June, 2006.



Heather J. Kliebenstein