

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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August 8, 2019

Cancellation No. 92071028

DrTim's Aquatics, LLC

v.

AG Concepts Corporation

Karl Kochersperger, Paralegal Specialist:

Proceedings herein have been suspended pending Respondent's¹ response to the Board's notice of default issued on June 5, 2019.

Respondent's motion filed July 1, 2019 to extend time to file its answer to the petition to cancel, and to extend conference, disclosure, discovery and trial dates, is granted as conceded. Trademark Rule 2.127(a).

Petitioner's consented motion, filed August 1, 2019, to suspend this proceeding for 60 days is granted. Inasmuch as Petitioner has noted that the parties are engaged in settlement negotiations and it consents to extending Respondent's time to answer, the notice of default is set aside.

¹ The change of correspondence address filed July 1, 2019 for Respondent is noted and the proceeding file has been updated to reflect the change.

Because the parties are negotiating for a possible settlement of this case, proceedings are suspended, subject to the right of either party to request resumption at any time.² *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.³ *See* Trademark Rule 2.18(b)(1).

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

An answer must be filed through ESTTA, the Board's Electronic System for Trademark Trials and Appeals. *See* Trademark Rule 2.106(b)(1)/2.114(b)(1). Conferencing, disclosure, discovery, and trial dates are reset as modified below:

Time to Answer	10/3/2019
Deadline for Discovery Conference	11/2/2019
Discovery Opens	11/2/2019
Initial Disclosures Due	12/2/2019
Expert Disclosures Due	3/31/2020
Discovery Closes	4/30/2020
Plaintiff's Pretrial Disclosures Due	6/14/2020
Plaintiff's 30-day Trial Period Ends	7/29/2020
Defendant's Pretrial Disclosures Due	8/13/2020

² 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).

³ If the parties are (or during the pendency of this proceeding become) parties to another proceeding involving the subject registration, the parties must notify the Board so the Board can consider whether consolidation or suspension of proceedings is appropriate.

Defendant's 30-day Trial Period Ends	9/27/2020
Plaintiff's Rebuttal Disclosures Due	10/12/2020
Plaintiff's 15-day Rebuttal Period Ends	11/11/2020
Plaintiff's Opening Brief Due	1/10/2021
Defendant's Brief Due	2/9/2021
Plaintiff's Reply Brief Due	2/24/2021
Request for Oral Hearing (optional) Due	3/6/2021

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 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).