

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

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Mailed: May 13, 2009

Concurrent Use No. 94002389

LIVE BAIT, LLC
(Serial No. 77558214)

v.

THEME FOOD INC.
(Serial No. 78568256)

Opposition No. 91189035
Opposition No. 91189036

LIVE BAIT, LLC

v.

THEME FOOD INC.
(Serial Nos. 78568256 and 78568268)

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

In an order dated April 11, 2009, the Board allowed Live Bait, LLC ("Live Bait") time to amend its concurrent use statement to specifically identify Theme Food, Inc.'s ("Theme Food") territory of use. Live Bait filed its amendment on May 11, 2009.

Live Bait amends its concurrent use statement as follows:

**Concurrent Use. No. 94002389
Opposition Nos. 91189035 and 91189036**

Live Bait claims as its territory of use "the entire State of Alabama and the following counties in the State of Florida: Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Jackson, Calhoun, Bay, Gulf, Gadsden, Liberty, Leon, Wakulla, Franklin, Jefferson, Taylor, Dixie, Levy, Citrus, Hernando, Pasco, Pinellas, Hillsborough, and Manatee."

Live Bait identifies Theme Food's territory of use as "the entire United States except the State of Alabama and the following counties in the State of Florida: Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Jackson, Calhoun, Bay, Gulf, Gadsden, Liberty, Leon, Wakulla, Franklin, Jefferson, Taylor, Dixie, Levy, Citrus, Hernando, Pasco, Pinellas, Hillsborough, and Manatee."

Insofar as the amendment narrows Live Bait's territory of use and specifies Theme Food's territory of use, it is acceptable. Accordingly, the motion to amend the concurrent use statement is granted.

Theme Food's consented motion, filed April 28, 2009, to extend the time to file its answer to the concurrent use proceeding and to the notices of opposition, and to extend conferencing, disclosure, discovery and trial dates, is granted. Trademark Rule 2.127(a). The agreed-upon schedule is copied below:

**Concurrent Use. No. 94002389
Opposition Nos. 91189035 and 91189036**

Time to Answer:	June 27, 2009
Deadline for Discovery Conference:	July 27, 2009
Discovery Opens:	July 27, 2009
Initial Disclosures Due:	August 26, 2009
Expert Disclosures Due:	December 24, 2009
Discovery Closes	January 23, 2010
Plaintiff's Pretrial Disclosures	March 9, 2010
Plaintiff's 30-day Trial Period Ends	April 23, 2010
Defendant's Pretrial Disclosures	May 8, 2010
Defendant's 30-day Trial Period Ends	June 22, 2010
Plaintiff's Rebuttal Disclosures	July 7, 2010
Plaintiff's 15-day Rebuttal Period Ends	August 6, 2010

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

