

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 07-21221
CIV- ALTONAGA/TURNOFF

RENEE BLASZKOWSKI, et al.

Plaintiffs

vs.

MARS, INC..
PROCTOR AND GAMBLE CO., et. al.

Defendants.

**DEFENDANT PET SUPERMARKET, INC.'S MOTION
FOR EXTENSION OF TIME TO RESPOND TO "AMENDED COMPLAINT"
AND MEMORANDUM IN SUPPORT**

Defendant PET SUPERMARKET, INC., through undersigned counsel, seeks an extension of time to respond to Plaintiffs' anticipated Amended Complaint. Plaintiffs' counsel has advised Pet Supermarket and the other 13 Defendants that Plaintiffs will be filing an amended complaint, yet as of the date of this motion, the operative pleading remains Doc. 1, filed May 9, 2007. Plaintiffs have not provided a date certain by which they will file their amended complaint.

This Court ordered Pet Supermarket to file a response to Plaintiffs' initial complaint by July 5, 2007. Pet Supermarket is therefore in the awkward position of (1) having prepared a response to a complaint that is soon to be superseded; (2) having to file that response by July 5; (3) knowing that Plaintiffs will amend, but (4) not yet having the benefit of that amendment. Although undersigned counsel is fully prepared to comply with this Court's Order and file its response by the

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July 5, 2007 deadline, filing a timely response to Doc.1 would be futile, as the response would be to a non-operative pleading.

Pursuant to Local Rule 7.1.A.3, undersigned counsel has conferred with Catherine MacIvor, Counsel for Plaintiffs, who has no objection to a ten-day extension of time to respond to Plaintiffs' forthcoming Amended Complaint. Pursuant to Plaintiffs' counsel's agreement, the due date for the response would therefore be ten days from July 5: July 16, 2007, as July 15 falls on a Sunday.¹

However, Plaintiffs' agreement to a ten-day extension from the current due date, depending on *when* Plaintiffs file their amended complaint, may conflict with Rule 15(a), Fed. R. Civ. P., which provides that when an amended pleading is filed "[a] party shall plead in response to an amended pleading within the time remaining for response to the original pleading *or within 10 days after service of the amended pleading, whichever period is longer*, unless the court otherwise orders." (emphasis added). It is impossible to predict when Plaintiffs will file their amended complaint or the extent to which that amendment will diverge from the initial pleading. Perhaps the ten days afforded to Pet Supermarket by right under Rule 15(a) will fall within the ten-day "extension" to which Plaintiffs have agreed. However, if Plaintiffs do not file their amended complaint by July 5, 2007, the ten-day agreed-upon extension cuts short Pet Supermarket's right, under Rule 15(a), to a full ten days to respond.

Accordingly, pursuant to rule 15(a), Pet Supermarket respectfully requests that this Court extend the time for filing a responsive pleading to, at the very least, ten days after service of

¹ Defendant Target Corporation has filed an agreed motion for extension of time up to and including July 20, 2007. [Doc. 98-1].

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Plaintiffs' (anticipated) Amended Complaint.

Respectfully submitted,

Kubicki Draper P.A.

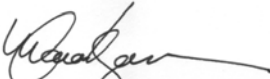
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of June, 2007, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM-ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic Filing.

Filed electronically this 29th day of June 2007

/s/ 
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