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Filing date: **01/23/2006**

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

Proceeding	91124518
Party	Plaintiff CUMMINS, INC.
Correspondence Address	DANIEL W. SIXBEY NIXON PEABODY LLP 8180 GREENSBORO DRIVE, SUITE 800 MCLEAN, VA 22102
Submission	Motion to Suspend for Civil Action
Filer's Name	Susan M. Freedman
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Signature	/Susan M. Freedman/
Date	01/23/2006
Attachments	Motion to Suspend.PDF ( 16 pages )

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

CUMMINS INC.	)	
	)	
Opposer,	)	Opposition No. 91124518
v.	)	
TAP ENTERPRISES, INC.	)	
	)	
Applicant.	)	

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Trademark Assistance Center  
Madison East, Concourse Level, Room C55  
600 Dulany Street  
Alexandria, Virginia 22314

**MOTION TO SUSPEND PROCEEDINGS**  
**PENDING DISPOSITION OF CIVIL ACTION**

Pursuant to 37 C.F.R. 2.117(a) and T.B.M.P. 510.02(a), Opposer, CUMMINS INC. (“Opposer”), hereby requests that the Board suspend this proceeding pending disposition of Opposer’s civil action against Applicant Tap Enterprises, Inc. (“Applicant”) filed in the U.S. District Court for the Southern District of Indiana on January 20, 2006 (Civil Action No. 1:06-cv-0095-SEB-VSS). A copy of Opposer’s Complaint and Summons are attached as Exhibit A.

Opposer’s Complaint alleges Applicant’s infringement of Opposer’s CUMMINS name and mark by use and registration of that name and mark for tools (the goods at issue in this proceeding) and power generators. As grounds for relief in the civil action, Opposer seeks, among other things:

- (1) a permanent injunction against use and registration of the CUMMINS name and mark by Applicant for Applicant’s products and services;
- (2) an order directing the Commissioner of Patents and Trademarks to refuse registration of Applicant’s U.S. Trademark Application No. 78/031,419 for the mark CUMMINS PRO INDUSTRIAL TOOLS & Design, which is the subject of this opposition;
- (3) an order directing the Commissioner of Patents and Trademarks to refuse registration of Applicant’s U.S. Trademark Application No. 78/031,424 for the mark CUMMINS INDUSTRIAL TOOLS & Design, which has been suspended pending disposition of the present opposition (and which, in the absence of an order from the federal district court, Opposer intends


- (4) an order directing the Commissioner of Patents and Trademarks to cancel Applicant's U.S. Trademark Registration No. 2,514,072 for the mark CUMMINS INDUSTRIAL TOOLS & Design, registered on December 4, 2001 (which Opposer will petition to cancel in the absence of an order from the federal district court).

Opposer's civil action thus involves issues in common with those pending in this opposition. Resolution of these issues will have a direct bearing on the issues presently and prospectively before the Board. Accordingly, favorable action by the Board is requested.

As required by 37 C.F.R. § 2.121(d), an original and two copies of this motion are enclosed.

Respectfully submitted,  
CUMMINS INC.

Dated: January 23, 2006

By:   
Susan M. Freedman  
Jeffrey L. Costellia

Nixon Peabody LLP  
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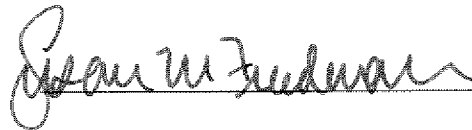
Attorneys for Opposer

Exhibit A: Complaint and Summons

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing MOTION TO SUSPEND PROCEEDINGS PENDING DISPOSITION OF CIVIL ACTION was served by first class mail, postage prepaid, this 23<sup>rd</sup> day of January 2006, upon:

Robert Lancaster  
BRYAN CAVE LLP  
One Metropolitan Square  
211 North Broadway, Suite 3600  
St. Louis, Missouri 63102

A handwritten signature in black ink, appearing to read "Susan M. Friedman", is written over a horizontal line.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

CUMMINS INC.  
and  
ONAN CORPORATION,  
Plaintiffs,

v.

TAP ENTERPRISES, INC.,  
Defendant.

1:06-cv-0095-SEB-VSS

Civ. No.: \_\_\_\_\_

Jury Trial Demanded

**SUMMONS IN A CIVIL CASE**

TO: TAP Enterprises, Inc.

via its Registered Agent:  
Daniel W. Ryberg  
11823 Arbor Street  
Omaha, NE 68144

via its Chairman:  
Robert Cummins  
Tap Enterprises, Inc.  
650 N. Lincoln  
Spring Hill, Kansas 66083

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFFS' ATTORNEYS:

William E. Padgett, Esq.  
Mary Jane Frisby, Esq.  
Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, IN 46204

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court, 46 East Ohio Street, Room 105, Indianapolis, Indiana 46204, within a reasonable period of time after service.

JAN 20 2006

CLERK

DATE

By   
(BY) DEPUTY CLERK

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