

ESTTA Tracking number: **ESTTA128083**

Filing date: **03/05/2007**

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

Proceeding.	91174153
Applicant	Defendant Jako AG
Other Party	Plaintiff JATO Athletics, LLC

Motion for Suspension in View of Civil Proceeding With Consent

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, Jako AG hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Jako AG has secured the express consent of all other parties to this proceeding for the suspension requested herein.

Jako AG has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,

/fjc/

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03/05/2007

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

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JATO ATHLETICS, LLC, :
Opposer, : Opposition No. 91,174,153
v. : Serial No. 78/235,150
JAKO AG, :
Applicant. :
----- X

MOTION ON CONSENT TO SUSPEND FOR CIVIL ACTION

Applicant, JAKO AG, hereby moves the Honorable Trademark Trial and Appeal Board pursuant to 37 C.F.R. § 2.117(a) and (c) for an order of the Honorable Trademark Trial and Appeal Board suspending the above-captioned opposition proceeding on the grounds that the Opposer and a related company of Applicant are engaged in a pending civil action, and the final determination of the civil action is likely to have a bearing on the case before the Board in this opposition proceeding.

In support of this motion, Applicant submits the following:

1. The civil action captioned as JATO ATHLETICS, LLC v. JAKO USA, LLC, Civil Action No. 4:06CV-595-Y (hereinafter, "the Civil Action"), is pending in the United States District Court for the Northern District of Texas, Fort Worth Division. Opposer in the pending opposition is the plaintiff in the Civil Action. Applicant, JAKO AG, is a minority shareholder of the defendant in the Civil Action, JAKO USA, LLC.
2. The factual and legal issues in the subject opposition are identical to the factual and legal issues in the Civil Action, that is, whether there is a likelihood of confusion between the Opposer's JATO & Design and JATO ATHLETICS & Design

marks and applicant's JAKO & Design mark. The Civil Action will be dispositive of all the issues raised by Opposer's Notice of Opposition.

3. Applicant's Answer in this proceeding currently is due on March 5, 2007.

4. Since the issue to be decided by the district court in the Civil Action will have a direct bearing on the outcome of the proceedings before the Board, Applicant moves to suspend the proceedings in Opposition No. 91,174,153 until the termination of the Civil Action. A copy of the Complaint that Opposer filed in the Civil Action is annexed hereto. Accordingly, Applicant respectfully requests that the Board suspend the instant proceeding pending the resolution of the Civil Action.

5. This motion is made with the consent of Opposer, through its counsel in the Civil Action, David A. Skeels, Esq., who represented by telephone on March 5, 2007 that he was authorized to consent on behalf of Opposer.

Dated: New York, New York
March 5, 2007

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ORIGINAL

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FORT WORTH DIVISION
2006 AUG 24 PM 2:50
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JATO ATHLETICS, LLC,
Plaintiff,

v.

JAKO USA, LLC,
Defendant.

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4-06CV-595-Y
Civil Action No.

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

COMES NOW PLAINTIFF JATO ATHLETICS, LLC, and complains of Defendant JAKO USA, LLC. Plaintiff would respectfully show the Court as follows:

A. Parties

1. Plaintiff, JATO Athletics, LLC ("JATO"), is a Limited Liability Company that is organized under the laws of the State of Texas.

2. Defendant, JAKO USA, LLC ("JAKO"), is a Limited Liability Company that is, on information and belief, organized under the laws of the State of New Jersey. Pursuant to Tex. Civ. Prac. & Rev. Code § 17.044(b): (a) JAKO is a nonresident of Texas; (b) the Texas Secretary of State is the agent for service on the nonresident; (c) JAKO currently engages and has engaged in business in Texas, including internet sales and the sponsorship of local soccer teams; (d) JAKO does not maintain a regular place of business in Texas; (e) JAKO does not have a designated agent for service of process in the State of Texas; and (f) this lawsuit arises out of JAKO's business in Texas.

Therefore, service may be effected on Defendant by serving the Texas Secretary of State, via certified mail from Plaintiff, to P.O. Box 12079, Austin, Texas 78711-2079, or by serving the Secretary of State via private process server at the Secretary of State's street address, 1019 Brazos

St., James E. Rudder Building, Austin, Texas, 78701, with two copies of the process along with the accompanying copies of this Petition, with the instruction to forward the same by certified mail, return receipt requested, to Defendant's principal place of business, addressed as follows: JAKO USA, LLC, President Markus Maritz, 44 White Meadow Road, Hillsborough, New Jersey 08844.

B. Jurisdiction

3. This Court has subject matter jurisdiction over the lawsuit pursuant to 28 U.S.C. § 1331. Specifically, this is, among other things, an action for trademark infringement and unfair competition that arises out of 15 U.S.C. §§ 1117 and 1125. Pursuant to U.S.C. § 1332, the Court also has diversity jurisdiction in that the parties are citizens of different states and the amount in controversy exceeds \$75,000.00.

4. This Court has personal jurisdiction over Defendant because Defendant has sufficient contacts with the State of Texas and with this District that it could reasonably anticipate being hailed into Court here, including specifically, but without limitation, Defendant's nationwide internet sales, including those in Texas, and its efforts to market its brand to clubs in Texas, including at least one in Arlington, Texas. Maintaining the suit in this Court would not offend traditional notions of fair play and substantial justice.

C. Venue

5. Venue is properly laid in this District pursuant to 28 U.S.C. 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

D. Conditions Precedent

6. All conditions precedent have been performed or have occurred.

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