

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

In the Matter of Application Serial No. 78,862,497
Published in the Official Gazette on May 15, 2007
Mark: UNKER'S

TTAB

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| _____) | |
| Pro 10 Originals, LLC) | |
|)) | |
| Opposer,) | |
|)) | |
| v.) | Opposition No. 91177847 |
|)) | |
| UIC) | |
|)) | |
| Applicant.) | |
| _____) | |

TRANSMITTAL LETTER

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
Tel: 571-272-1000

Dear Sir/Madam,

Applicant timely submits herewith the following documents for filing:

1. Motion to Suspend Opposition Proceedings
2. Memorandum of Law in Support of Motion Suspend Opposition
3. Order
4. Certificate of Service for Motion to Suspend Opposition Proceedings
5. Federal Civil Action Complaint; and
6. Certificate of Service for Federal Action Complaint.
7. Notice of Opposition against the above captioned '497 Mark
8. Timely answer of Applicant to the Notice of Opposition



05-29-2008

Respectfully submitted,

Dated: 5/29/2008

Patrick Henry

Patrick Henry
Individual/Applicant/Defendant
UIC
637 Pine Street
Upton, WY 82730-0827
Tel: 307-468-2843

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Applicant.)
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Express Mail label number EQ28195761168
I hereby certify that this correspondence is being US
deposited with the United States Postal Service
'Express Mail Post Office To Addressee' service in an
envelope addressed to:

Attn: TTAB – NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
Diana McMillan 5/29/08
Diana McMillan Date

Opposition No. 91177847

MOTION TO SUSPEND OPPOSITION PROCEEDINGS

Comes now, the Applicant and Applicant respectfully requests that the present Opposition be suspended pending the adjudication of a pending Federal Declaratory Judgment Action before the U.S. District Court for the District of Wyoming between the above captioned parties, 08-CV-138-J. Applicant herein provides the Board with a copy of the civil action complaint. The Motion is supported by the attached Memorandum of Law. A proposed form of Order is attached.

Dated: 5/29/2008

Patrick Henry

Patrick Henry/Individual/Applicant

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**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO SUSPEND OPPOSITION**

I. Introduction and Factual Background

This paper is respectfully submitted in Support of Applicant's Motion to Suspend the present Opposition, pending the adjudication of a Federal Declaratory Judgment Action which has been pending since May 28, 2008 in the United States District Court for the District of Wyoming (08-CV-138-J) and which involves the very same parties. The federal dispute involves declaratory judgment under 28 U.S.C. §2201 and §2202 regarding infringement of the Applicant's mark UNKER'S.

II. Argument

This action should be stayed. As the Board has previously noted:

“It is the policy of the Board to suspend proceedings when the parties are involved in a civil action which may be dispositive of or have bearing on the Board case. See Trademark Rule 2.117(a); see also TMBP § 510.02 (a) (2d ed. Rev 2004).

The exact same rationale applies here.

1. The Federal Lawsuit Will Adjudicate All of the Issues Raised Here.

This Opposition seeks to adjudicate issues that will be before the Federal Court in Wyoming and which will be finally adjudicated there.

All of the issues raised in the Opposition will be adjudicated as part of Applicant’s Federal Declaratory Judgment claim. All issues involving the subject matter of U.S. Serial No. 78/862,497 will be adjudicated by the Wyoming Federal Court in a trial.

The Federal Court in Wyoming will thus adjudicate the very issues raised in the Opposition in the context of Applicant’s Federal Declaratory Judgment claim. The federal lawsuit will be dispositive of or have a bearing on the Opposition. The action should be suspended under Rule 2.117(a).

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