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

Proceeding	91182881
Party	Plaintiff Glenn Danzig
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Submission	Motion to Suspend for Civil Action
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<p>Glenn Danzig,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Cyclopiian Music, Inc.</p> <p style="text-align: center;">Defendant.</p>	<p>Opposition No. 91182881 (parent) Opposition No. 91184044 Cancellation No. 92045173 Cancellation No. 92050014</p> <p>Serial Nos. 76605515 76605840</p> <p>Registration Nos.: 2793533 2634215 2735848 2770984</p> <p>Defendant's Claimed Marks:</p> <p>MISFITS (word mark)</p> <p>MISFITS (stylized "horror font logo")</p> <p></p> <p>"Fiend Skull" design</p> <p></p>
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Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MOTION FOR SUSPENSION PENDING CIVIL ACTION

To the Commissioner for Trademarks:

Petitioner, Glenn Danzig (“Danzig”), by and through his attorney, and pursuant to 37 CFR section 2.117, hereby moves to suspend the above captioned proceedings (the “Proceedings”) because a civil action that is currently pending in the United States District Court for the Central District of California is likely to resolve the matters in the Proceedings. In support of this motion, Danzig states as follows:

A. The Instant Motion

1. This motion is to suspend the Proceedings based on the pendency of an action before the United States District Court for the Central District of California, *Glenn Danzig v. Gerard Caiafa, etc., and Cyclopien Music Inc., etc., et al.*, United States District Court for the Central District of California, Case No. CV14-2540 RGK (the “District Court Action”), filed April 3, 2014. A copy of the summons and complaint and related court forms in the District Court Action is attached hereto as Exhibit “A.” The summons and complaint and related court forms were served by certified mail on defendants Gerard Caiafa (“Caiafa”) and the corporation through which he does business, Cyclopien Music, Inc. (“Cyclopien”) on April 9, 2014, in accordance with applicable California and Federal procedure. Courtesy copies have been emailed to their counsel in these Proceedings.

B. Procedural Background

2. The District Court Action involves the issues identical to the issues herein, and is likely to resolve all matters at issue in the Proceedings.

Specifically, Danzig alleges in the District Court Action that the registrations and applications also at issue in the Proceedings should be cancelled and granted because Cycloplan is not the owner of the marks at issue.

3. To the contrary, pursuant to a 1994 settlement agreement between Danzig, on the one hand, and Caiafa and certain others on the other hand, Danzig and Caiafa co-own the Marks. Caiafa's registrations and attempted registrations of the Marks are improper because they fail to disclose that Danzig is a co-owner of the marks and, for the same reason, are fraudulent as the PTO. The District Court Action also alleges that Caiafa's and Cycloplan's wrongful assertions of ownership of the Marks constitute false advertising in violation of the Lanham Act, 15 U.S.C. § 1125, breach of contract, and interference with Danzig's prospective business advantage.

C. Factual Background

4. From 1977 to 1983, Danzig and Caiafa were members of the band The Misfits. Effective December 31, 1994, Danzig and Caiafa entered into a written agreement settling pending litigation between them over, among other things, ownership of the Marks (the "1994 Settlement Agreement"). In the

Settlement Agreement Danzig and Caiafa agreed to be co-owners of the Marks, each having the non-exclusive right (as to each other) to use the marks.

5. In the early and mid-2000s, Caiafa, acting through his company Cyclopien, applied to register the Marks in Cyclopien's name, without disclosing the existence of the 1994 Settlement Agreement.

6. On November 15, 2005, Danzig instituted a cancellation proceeding to cancel registrations for the registrant's marks MISFITS and MISFITS in a stylized form, U.S. registration numbers 2793533, 2634215 and 2735848.

7. Later, Danzig filed three other related proceedings. Two were oppositions involving other MISFITS marks, (91182881 and 91184044) and a third was a cancellation proceeding against a design mark referred to as the "fiend skull" mark (92050014). Although the parties have made substantial efforts to resolve this dispute over a number of years, and the Board has granted a number of extensions to accommodate the parties' ongoing settlement discussions, to date the parties have not reached a settlement.

8. On April 1, 2014, the TTAB entered an order consolidating the above-entitled Proceedings as they involve the same parties and factual and legal issues.

D. Suspension Is Proper

9. Suspension of TTAB proceedings when an action on the same issues is pending in the district court is appropriate, even when the action is filed

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