

ESTTA Tracking number: **ESTTA309718**

Filing date: **10/05/2009**

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

Proceeding	91191668
Party	Defendant Vital Pharmaceuticals, Inc.
Correspondence Address	Kalina Pagano Vital Pharmaceuticals, Inc. 15751 SW 41st Street, #300 Davie, FL 33331  kpagano@vpxsports.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Kalina Pagano
Filer's e-mail	kpagano@vpxsports.com
Signature	/kp/
Date	10/05/2009
Attachments	Motion to Suspend Proceeding 91191668.pdf ( 23 pages )(3237709 bytes )

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

INNOVATIVE VENTURES, LLC

Opposer

Opposition No. 91191668

Serial No. 77495541

v.

Applicant

VITAL PHARMACEUTICALS, INC.  
\_\_\_\_\_ /

**MOTION TO SUSPEND PROCEEDINGS PENDING OUTCOME OF OPPOSER'S CIVIL ACTION**

Pursuant to 37 CFR §2.117(a) and TBMP §510.02(a), VITAL PHARMACEUTICALS, INC. (hereinafter "VPX"), hereby moves the Trademark Trial and Appeal Board to suspend this opposition proceeding, pending the outcome of the civil action: *Hansen Beverage Company v. Innovative Ventures, L.L.C. d/b/a Living Essentials*, Case No. 08-CV-01166 (IEG) in the U.S. District Court, Southern District of California, Sacramento Division, filed on July 1, 2008 (hereinafter "5 Hour California Action") and states as follows:

On or about June 10, 2008, VPX filed an intent-to-use trademark application for "nutritional supplements; nutritionally fortified beverages" in International Class 5. The United States Patent and Trademark Office (hereinafter "USPTO") subsequently assigned Serial Number 77/495, 541 and the mark was noticed for publication on April 28, 2009.

Opposer, INNOVATIVE VENTURES, LLC (hereinafter "IVLLC") was granted an extension, up to and including August 26, 2009, in which to oppose VPX's "7 Hour Down" mark (Serial Number 77/495, 541), based upon the April 28, 2008 Notice Of Publication.

VPX's Answer to the Opposition is due October 5, 2009. However, VPX contends that the opposition proceeding should be suspended, based upon the allegations set forth in the Complaint for

the 5 Hour California Action. A copy of the complaint in the 5 Hour California Action is attached hereto as Exhibit "A."

VPX contends further that the disposition of the 5 Hour California Action will have a bearing on the validity of the 5 Hour Mark, as it pertains to this instant proceeding. As such, VPX prays that the Board would enter an order granting the relief sought in this motion, suspending this proceeding, and any further relief deemed proper.

In addition, VPX hereby moves the Board for preservation of its rights, to file and serve its Answer to the Opposition, if this instant Motion is denied.

Date: October 5, 2008  
(Filed electronically via USPTO.ESTTA)

Respectfully submitted,

---

Kalina Pagano, Esquire  
Attorney for Applicant  
Vital Pharmaceuticals, Inc.  
15757 SW 41<sup>st</sup> Street, #300  
Davie, FL 33331  
Telephone: 954-641-0570 ext 293  
Fax: 954-641-0583  
Email: [kpagano@vpxsports.com](mailto:kpagano@vpxsports.com)

CERTIFICATE OF SERVICE

I certify that I served:

**MOTION TO SUSPEND PROCEEDINGS PENDING OUTCOME OF OPPOSER'S CIVIL ACTION**

on October 5, 2008 by:

\_\_\_\_\_ delivering

  x   mailing (via first class mail)

  x   email

A copy to:

Anessa Kramer  
Brooks Kushman  
1000 Town Center, Suite 2200  
Southfield, MI 48075  
Telephone: 248-358-4400  
Email: akramer@brookskushman.com

\_\_\_\_\_  
Kalina Pagano, Esquire

# EXHIBIT "A"

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.