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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
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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.ETTA)

Respectfully submitted,

Kalina Pagano, Esquire
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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)

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Kalina Pagano, Esquire

EXHIBIT “A”



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