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

Proceeding	91191669
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 91191669.pdf ( 21 pages )(3192895 bytes )

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

INNOVATIVE VENTURES, LLC

Opposer

Opposition No. 91191669  
Serial No. 77495536

v.

Applicant

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

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

Pursuant to 37 C.F.R. §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 (1EG) 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 "energy drinks; isotonic drinks; sports drinks" in International Class 32. The United States Patent and Trademark Office (hereinafter "USPTO") subsequently assigned Serial Number 77/495, 536 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, 536), 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

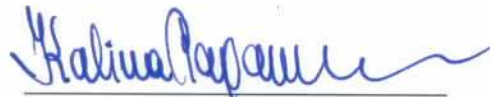
the 5 Hour California Action. A copy of the complaint in the 5 Hour California Action is attached hereto as **Exhibit "A."**

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 enters an order granting the relief sought in this motion, suspending this proceeding, and for 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)

  x   email

A copy to:

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

## EXHIBIT "A"

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