

ESTTA Tracking number: **ESTTA374074**

Filing date: **10/19/2010**

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

Proceeding	91196597
Party	Plaintiff Jackel International Limited
Correspondence Address	Jessica Parise Fulbright & Jaworski L.L.P. 666 Fifth Avenue New York, NY 10103 UNITED STATES mmutterperl@fulbright.com, jparise@fulbright.com, mrosenfeld@fulbright.com, hrosenberg@fulbright.com, nyipdocket@fulbright.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Jessica S. Parise
Filer's e-mail	Jparise@fulbright.com, mrosenfeld@fulbright.com, nyipdocket@fulbright.com, jfoster@fulbright.com,
Signature	/Jessica S. Parise/
Date	10/19/2010
Attachments	Jackal Motion to Suspend.pdf (31 pages)(404503 bytes)

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

In the matter of Application Serial Nos.: 85/003,453, 85/003,408, 85/003,358

By: Admar International Inc.

Filed: March 31, 2010

Published in the Official Gazette on August 24, 2010

Marks: SIP IT UP, DURA SPOUT, SPORTSTER

Jackel International Limited,

Opposer,

v.

Admar International Inc.,

Applicant.

Opposition Nos. 91196598, 91196597,
91196599

MOTION TO SUSPEND

Opposer Jackel International Limited (“Jackel” or “Opposer”) hereby requests pursuant to Trademark Rule 2.117(a), 37 C.F.R. § 2.117(a), the suspension of the above-identified opposition proceedings (“the Oppositions”) until such time as there is a final ruling in civil case number 10-CV-00706, *Mayborn USA, Inc. and Jackel International, Limited v. Luv N’ Care, Ltd., and Admar International, Inc.*, which is currently pending in the United States District Court for the District of Connecticut (“the Lawsuit”). A copy of the Second Amended Complaint in the Lawsuit is enclosed as Exhibit A.

The Lawsuit involves all of the parties, marks, and issues currently before the Board in the Oppositions. For example, the Lawsuit includes issues of whether the referenced marks are registered and whether Defendants unfairly and in bad faith applied to register the marks, which are identical or nearly identical to Opposer’s own marks, to interfere with Jackel’s expansion in the United States.

While the issue of suspension falls within the discretion of the Board, the Trademark Trial and Appeal Board (“TTAB”) Manual of Procedure (“TBMP”) notes that “ordinarily, the Board will suspend proceedings in the case before it if the final determination of the other proceeding will have a bearing on the issues before the Board.” TBMP § 510.02(a). Similarly, Trademark Rule 2.117(a) states that:

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.

37 C.F.R. 2.117(a).

Thus, it is standard practice for the Board to suspend opposition proceedings when a lawsuit “will have a bearing on the issues before the Board.” TBMP § 510.02(a). *See Whopper-Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. 805, 807 (TTAB. 1971) (granting motion to stay proceeding pending the outcome of civil litigation).

Here, the court’s findings in the Lawsuit will have a bearing on the issues before the Board. A failure to stay the Oppositions would force the parties to duplicate their efforts and litigate the same issues twice. This would present the possibility of potentially inconsistent opinions, and would waste the resources of the Board, the court and the parties.

For the foregoing reasons, Jackel requests that the Board suspend all proceedings in the Oppositions pending final resolution of the Lawsuit.

Date: October 19, 2010

Respectfully submitted,

/Jessica S. Parise/
Mark N. Mutterperl
Jessica S. Parise
FULBRIGHT & JAWORSKI L.L.P.
666 Fifth Avenue, 31st Floor
New York, New York 10103-3198
Telephone: (212) 318-3000
Facsimile: (212) 318-3400

Attorneys for Opposer
Jackel International Limited

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.