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

Proceeding	91196599
Party	Plaintiff Jackel International Limited
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Submission	Motion to Suspend for Civil Action
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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/
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Exhibit A

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