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

Proceeding	91199957
Party	Defendant Gelocity (UK) Ltd
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Submission	Motion to Suspend for Civil Action
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Attachments	gelocity motion to suspend and vacate default [2011-08-05].pdf ( 36 pages ) (980016 bytes )

TRADEMARK TRIAL AND APPEAL BOARD

Jell-E-Bath, Inc.,

Opposer,

v.

Gelocity (UK) Ltd,

Applicant.

Opposition No. 91199957

APPLICANT'S MOTION TO  
SUSPEND AND RESPONSE TO  
ORDER TO SHOW CAUSE

Applicant submits the instant paper moving the Board to suspend the proceedings in view of a currently pending case in the Eastern District of New York concerning the same parties and same marks at issue here, and further in response to the Board's Order to Show Cause dated July 19, 2011. For the following reasons, the Board should not enter default and should suspend the present proceedings.

On December 7, 2010, five and a half months before the present proceeding was instituted, Applicant filed suit against Opposer in the United States District Court for the Eastern District of New York. The case, *Gelocity UK Limited v. Jell-E-Bath, Inc. et al.*, CV10-5677, concerns the same parties as this proceeding and the same mark at issue here. A copy of the complaint and answer/counterclaims are included herewith as Exhibits 1 and 2.

In the Eastern District of New York action, the parties are disputing precisely the same issue presently before the Board in this proceeding, namely, whether Applicant's mark, when used in connection with the goods listed in the instant application, is likely to cause confusion

with Opposer's mark. Opposer confirms the relevancy of the Eastern District of New York case by citing the same in its Notice of Opposition. *See Notice of Opposition* ¶¶ 12-13 at 3.

The outcome of the Eastern District of New York action will be dispositive of the same issues presently before the Board. In particular, the action there will determine whether Applicant's mark, when used in conjunction with Applicant's goods, is likely to cause confusion with Opposer's mark, thereby violating section 2(d) of the Lanham Act. This is precisely the issue now before the Board in this proceeding.

In connection with the pending district court case, attorney for Applicant has had numerous settlement discussions with Attorney for Opposer. Early discussions made settlement appear likely, but discussions ultimately proved fruitless (in large part because principal for Opposer apparently became non-communicative with her attorney, as detailed below). In focusing on settling the Eastern District of New York case, which would have also settled the present proceeding, attorney for Applicant inadvertently neglected to docket the Notice of Opposition and the resulting deadline for Applicant's response. As a result, Applicant erroneously failed to timely respond to the notice. Applicant's failure to respond here was not due to neglect or indifference but, to the contrary, due to its substantive and serious focus on resolving the parties' dispute in the context of the Eastern District of New York case.

Resolution of the parties' dispute has recently been complicated. Opposer's principal has entered bankruptcy, terminating representation by her attorney in the Eastern District of New York case and forcing that case to be suspended for just over one month. *See Order of July 28, 2011*, attached hereto as Exhibit 3. Opposer's counsel the Eastern District of New York case is the same attorney representing Opposer here. The undersigned, seeking to enter into stipulated

suspension of this proceeding, was informed by Opposer's counsel that Opposer (i.e., its principal, Ms. De Alicante) he has been uncommunicative with him. All indications are that Opposer will terminate its counsel here as Opposer did in the Eastern District of New York case. What is more, Opposer's recent conduct in the Eastern District of New York case indicate that Opposer will be unable and/or unwilling to prosecute this matter before the Board. Thus, moving forward with this proceeding presently would not likely lead expeditiously to resolution.

For these reasons, pursuant to 37 CFR § 2.117, Applicant respectfully requests that the present proceedings be suspended pending outcome of the Eastern District of New York Action. In the alternative, and in response to the Order to Show Cause, Applicant requests that default not be entered and that Applicant be permitted to enter its response to the Notice of Opposition.

Dated: August 5, 2011

Respectfully Submitted,  
Applicant Gelocity UK Ltd.,  
by its Attorney



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# EXHIBIT 1

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