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

Proceeding	91211624
Party	Plaintiff Children's Miracle Network
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Submission	Motion to Suspend for Civil Action
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<p>CHILDREN’S MIRACLE NETWORK,</p> <p style="text-align:right">Opposer,</p> <p style="text-align:center">v.</p> <p>MIRACLE BABIES,</p> <p style="text-align:right">Applicant.</p>	<p style="text-align:center"><b>OPPOSER’S MOTION TO SUSPEND FOR CIVIL ACTION</b></p> <p style="text-align:center">Opposition No. 91211624 Serial No. 85/590,696</p>
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Pursuant to 37 C.F.R. § 2.117(a), Children’s Miracle Network (“CMN”), by and through its attorneys Holland & Hart LLP, hereby move the Trademark Trial and Appeal Board (“TTAB”) to suspend proceedings because the parties to this case are engaged in a civil action pending in federal court that will have a bearing on this case.

**PROCEDURAL HISTORY**

1. Applicant’s “Miracle Babies” mark was published for opposition on March 19, 2013. CMN timely filed its Notice of Opposition on July 17, 2013, commencing these proceedings before the TTAB.

2. CMN’s Notice of Opposition asserts, among other things, that Applicant’s “Miracle Babies” mark is confusingly similar to numerous registered and unregistered marks owned by CMN, including but not limited to:

a. United States Trademark Registration No. 1,553,246 for CHILDREN’S MIRACLE NETWORK for charitable fundraising services;

b. United States Trademark Registration No. 2,264,436 for CHILDREN’S MIRACLE NETWORK for radio and television programming and production of radio and television programs in the field of children and children’s issues;

- c. United States Trademark Registration No. 1,916,839 for CHILDREN'S MIRACLE NETWORK for radio and television broadcasting in the field of children and children's issues;
- d. United States Trademark Registration No. 2,209,255 for CHILDREN'S MIRACLE NETWORK for providing health care information;
- e. United States Trademark Registration No. 1,356,563 for MIRACLES for a newsletter pertaining to charitable services;
- f. United States Trademark Registration No. 1,343,289 for CHILDREN'S MIRACLE NETWORK TELETHON for charitable fundraising services;
- g. United States Trademark Registration No. 1,698,499 for BOWLING FOR MIRACLES for charitable fundraising services;
- h. United States Trademark Registration No. 2,954,518 for CHILDREN'S MIRACLE NETWORK and design for charitable fundraising and eleemosynary services in the field of monetary donations;
- i. United States Trademark Registration No. 2,954,517 for CHILDREN'S MIRACLE NETWORK and design for radio and television broadcasting in the field of children and children's issues;
- j. United States Trademark Registration No. 2,954,516 for CHILDREN'S MIRACLE NETWORK and design for radio and television programming and production of radio and television programs in the field of children and children's issues;
- k. United States Trademark Registration No. 2,951,236 for CHILDREN'S MIRACLE NETWORK and design providing health care information;
- l. United States Trademark Registration No. 3,917,739 for CHILDREN'S MIRACLE NETWORK HOSPITALS for charitable fundraising services;

- m. United States Trademark Registration No. 1,851,682 for MIRACLE HOME for real estate brokerage services;
- n. United States Trademark Registration No. 3,209,006 for KIDS ALL-STAR MIRACLE HOME for charitable fundraising and eleemosynary services in the field of monetary donations;
- o. United States Trademark Registration No. 3,209,007 for KIDS ALL-STAR MIRACLE HOME and design for charitable fundraising and eleemosynary services in the field of monetary donations;
- p. United States Trademark Registration No. 3,209,009 for HOME OF MIRACLES and design for charitable fundraising and eleemosynary services in the field of monetary donations; and
- q. United States Trademark Registration No. 3,387,880 for MIRACLE SOUP for providing an interactive website for enabling communications and collaboration among a charitable foundation and its associates, sponsors and member hospitals in the field of charitable fundraising and eleemosynary services.

(Notice of Opposition, ¶ 7(a) – (q).)

3. In its Notice of Opposition, CMN also claims that Applicant’s “Miracle Babies” mark “is highly likely to cause consumer mistake, confusion or deception as to the affiliation, connection, sponsorship and/or relationship of Applicant with [CMN], or as to the origin, sponsorship, or approval of Applicant’s services by [CMN].” (Notice of Opposition, ¶ 15.)

4. On March 4, 2015, CMN filed a Complaint in the United States District Court for the Southern District of California against Applicant (the “Federal Court Complaint”), entitled “Children’s Miracle Network v. Miracle Babies, United States District Court for the Southern

District of California Case No. 3:15-cv-499-AJB-DHB. A copy of that Complaint is attached hereto as Exhibit A.

5. In the Federal Court Complaint, CMN alleges that Applicant’s “Miracle Babies” mark infringes the same registered marks identified in CMN’s Notice of Opposition in this case. (Compare CMN’s Notice of Opposition, ¶ 7(a) – (q) and the Federal Court Complaint, ¶ 14(a) – (q).)

6. In the Federal Court Complaint, CMN alleges that “Miracle Babies” is “confusingly similar to CMN’s various “Miracle”-based marks,” (Federal Court Complaint, ¶ 20), and that Applicant’s use of “Miracle Babies is “likely to cause consumer confusion and a false association between CMN’s services and the services offered by Defendant, falsely leading consumers to believe that the services emanate from the same source or that CMN and Miracle Babies are affiliated.” (*Id.*, ¶ 22.)

7. In the Federal Court Complaint, CMN seeks permanent injunctive relief preventing Applicant from infringing its rights to its various “Miracle”-based marks. (*Id.*, Prayer for Relief at ¶¶ (A) through (E).

### **ARGUMENT**

37 C.F.R. § 2.117 provides that “[w]henver 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 . . . which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action . . . .” 37 C.F.R. § 2.117(a).

CMN and Applicant, the parties to this case, are now parties to a federal civil action concerning the same trademarks – CMN’s various “Miracle”-based marks listed above and Applicant’s “Miracle Babies” mark. (Compare CMN’s Notice of Opposition, ¶ 7(a) – (q) and the Federal Court Complaint, ¶ 14(a) – (q).) In both actions, CMN alleges that Applicant’s

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