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

Proceeding	91221923
Party	Defendant Molotov Entertainment
Correspondence Address	M SCOTT ALPRIN ALPRIN LAW OFFICES PC 5 PINEHURST CIR NW WASHINGTON, DC 20015 UNITED STATES trademarks@alprinlaw.com
Submission	Motion to Suspend for Civil Action
Filer's Name	M. Scott Alprin
Filer's e-mail	trademarks@alprinlaw.com
Signature	/M. Scott Alprin/
Date	04/19/2016
Attachments	MTG v. Molotov Entertainment - Mot. to Suspend Pending Civil Case - Final PDF.pdf(1144083 bytes )

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

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	)	
Molotov Theatre Group	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91221923
	)	
	)	Ser. No. 86230826 (opposed application)
Molotov Entertainment	)	
	)	
Applicant.	)	
	)	
-----	)	

**MOTION TO SUSPEND CASE PENDING OUTCOME OF CIVIL MATTER  
BEFORE D.C. SUPERIOR COURT**

Pursuant to TBMP Section 510.02(a) and 37 CFR Section 2.117(a), Applicant Molotov Entertainment (“Applicant”) hereby moves the Board to suspend the subject proceeding, including discovery deadlines for both sides, pending final determination of a related civil proceeding before the Superior Court of the District of Columbia, Civil Division, Case #2016 SC3 000849, WRIGHT, MICHAEL VS. MOLOTOV THEATRE GROUP et al (hereinafter, “the Civil Action”), involving Applicant in the position of plaintiff and Opposer Molotov Theatre Group (“MTG” or “Opposer”) in the position of defendant. It is noted that Michael Wright is the sole proprietor of Molotov Entertainment. A copy of the Complaint and a copy of the Praecipe setting the trial date for May 26, 2016 in the Civil Action are attached hereto. It is noted that an Answer was not required to be filed by Opposer in the Civil Action.

**I. Background**

On or around September 1, 2012, the owner of Applicant, Michael Wright, entered into an oral agreement with the owner of Opposer, Alex Zavistovich, to work together as Co-Artistic Directors and partners to promote MTG as a horror theatre production company, and to make MTG a success. This agreement shall be referred to as the “Five Year Plan.” Mr. Wright did not agree to be a volunteer, and did not agree that any financial contribution he made to MTG was to be considered a donation. Rather, Mr. Wright agreed to future compensation from MTG for his position as MTG’s co-artistic director, or, if MTG never succeeded by accomplishing their financial goals, to defer reimbursement of his costs.

In order to promote MTG and help to make it a success, Mr. Wright spent an immense amount of time and significant amount of money, expecting that Mr. Zavistovich would honor the aforementioned Five Year Plan. A sample of some of the actions that Mr. Wright undertook to promote MTG follow:

- The development of a multi-season schedule of shows.
- The expansion of the Board of Directors, fundraising efforts and audience development.
- The development of new educational programs and course offerings.
- The establishment of a permanent theater home and repertory company of actors.
- The creation, development and maintenance of a web based e-commerce portal for MTG.

On February 13, 2014, MTG, which had assembled a Board of Directors after Mr. Wright had become Co-Artistic Director, terminated Mr. Wright's position as Co-Artistic Director of MTG. As the Five Year Plan had not come to fruition, Mr. Wright seeks reimbursement from MTG for his expenses that benefitted MTG and/or financial contributions on behalf of MTG in the Civil Action.

#### **I. Argument**

Applicant herein moves the Board to suspend the subject opposition proceeding pending the outcome of the Civil Action.

As exemplified by TBMP Section 510.02(a) and 37 CFR Section 2.117(a), the Board's traditional policy is to suspend a Board action when there is a related civil action. *See General Motors Corp. v. Cadillac Club Fashions Inc.*, 22 USPQ2d 1933, 1936-37 (TTAB 1992). Further, it is not necessary that the related civil matter be dispositive of all issues before the Board. Rather, as the language in Section 2.117(a) states, it is in the Board's discretion to suspend an opposition or cancellation action based on a civil action which "may have a bearing on the case."

There is no doubt that the issues being litigated in the Civil Action are related to and have a bearing upon the issues being litigated in the subject opposition. In order for the judge in the Civil Action to determine if Mr. Wright is owed money by MTG under a number of legal doctrines, such as unjust enrichment, the judge will have to determine if Mr. Wright was a volunteer, an employee, or an independent contractor. The question of Mr. Wright's status at MTG is related to whether Mr. Wright is the proper owner of his applied-for trademark for "Molotov ENTERTAINMENT and Design." MTG has claimed that it is the owner of the "skull logo" that is part of Applicant's mark in discovery for this subject opposition; yet Mr. Wright was billed directly and paid the designer half of the fee to design the "skull logo" with his own money, and was never reimbursed. MTG approved of Mr. Wright being responsible for the operation of Molotov ENTERTAINMENT and agreed to give Mr. Wright autonomous control and ownership of this business. MTG did not want any affiliation with this "for-profit" business

due to MTG's concern that a conflict may exist that would jeopardize MTG's 501(c)3 non-profit charitable status with the Internal Revenue Service.

Based on the foregoing, Applicant respectfully requests that the Board grant Applicant's request to suspend the subject proceeding, including discovery deadlines for both sides, pending the outcome of the Civil Action.

Respectfully submitted,

**ALPRIN LAW OFFICES, P.C.**

Date: April 19, 2016



M. Scott Alprin  
Nicholas T. Santucci  
Alprin Law Offices, P.C.  
5 Pinehurst Circle, N.W.  
Washington, D.C. 20015  
Tel: (202) 659-8225  
Fax: (202) 659-0441  
Email: [trademarks@alprinlaw.com](mailto:trademarks@alprinlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **Motion To Suspend Case Pending Outcome Of Civil Matter Before D.C. Superior Court** has been served on Opposer via e-mail, on April 19, 2016, to Kelu L. Sullivan, counsel for Opposer, at:

**bhipdocket@bakerlaw.com,  
ksullivan@bakerlaw.com**

/M. Scott Alprin/  
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