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

Proceeding	91238344
Party	Defendant Herman Miller, Inc.
Correspondence Address	LUKE DEMARTE MICHAEL BEST & FRIEDRICH LLP 444 West Lake Street, Suite 3200 CHICAGO, IL 60606 Email: chiipdocket@michaelbest.com
Submission	Motion to Suspend for Civil Action
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Signature	/Thomas A. Agnello/
Date	01/22/2018
Attachments	Motion to Suspend Opposition.pdf(91431 bytes) Exhibit A to Motion to Suspend Opposition.pdf(2466141 bytes) Exhibit B to Motion to Suspend Opposition.pdf(177748 bytes)

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

BLUMENTHAL DISTRIBUTING, INC.,

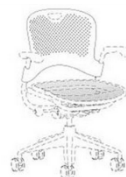
Opposition No. 91238344

Opposer,

Application No. 86/969876

v.

HERMAN MILLER, INC.,



Mark:

Applicant.

Filed: April 8, 2016

**APPLICANT'S MOTION TO SUSPEND OPPOSITION PROCEEDING PENDING
CIVIL ACTION**

Applicant, Herman Miller, Inc. (“Herman Miller”), moves under 37 C.F.R. § 2.117(a) & (c) to suspend this opposition proceeding before the Board (the “Opposition Proceeding”) pending the outcome of a civil action between Herman Miller and Opposer, Blumenthal Distributing, Inc. (“Blumenthal”), in the United States District Court for the Central District of California, Herman Miller, Inc. v. Blumenthal Distributing, Inc., et al, No. 2:17-cv-04279 (the “District Court Action”), involving issues that are in common with, and may have a bearing on, the Opposition Proceeding. See TBMP § 510.02(a). Blumenthal acknowledges the District Court Action in its Notice of Opposition in the Opposition Proceeding. Notice of Opposition, Dkt. #1, ¶ 16.

As background, Herman Miller’s published trade dress application, U.S. Application No. 86/969876 (the “Application”), is the subject of the Opposition Proceeding. The Application is for the trade dress of Herman Miller’s Caper chair (the “Caper Trade Dress”). In the Complaint

against Blumenthal in the District Court Action, Herman Miller has asserted a claim against Blumenthal for trade dress infringement under 15 U.S.C. § 1125(a), alleging infringement of the Caper Trade Dress. Exhibit A, Second Amended Complaint in the District Court Action, ¶¶ 12-26; 61-73. Attached as Exhibit A is a true and correct copy of the Second Amended Complaint in the District Court Action, and attached as Exhibit B is a true and correct copy of Blumenthal’s Answer to the Second Amended Complaint in the District Court Action.

The pending District Court Action involves issues that are in common with, and may have a dispositive bearing on, the Opposition Proceeding. In particular, in Blumenthal’s Answer to the Second Amendment Complaint in the District Court Action, Blumenthal asserted several affirmative defenses, including assertions that (1) Herman Miller lacks valid, protectable trade dress rights in the Caper Trade Dress, (2) functionality of the Caper Trade Dress, (3) lack of secondary meaning and/or distinctiveness of the Caper Trade Dress, and (4) genericness of the Caper Trade Dress. Exhibit B, Answer to Second Amended Complaint in the District Court Action, at pp. 23-24. Similarly, in its Notice of Opposition, Blumenthal alleges (1) functionality of the Caper Trade Dress, and (2) lack of distinctiveness of the Caper Trade Dress. Notice of Opposition, Dkt. #1, ¶¶ 19-35 (alleging functionality of the Caper Trade Dress); ¶¶ 36-49 (alleging lack of distinctiveness of the Caper Trade Dress). Because of these common issues, as well as additional issues in the District Court Action, judicial economy would be best served by suspension of the Opposition Proceeding. TBMP § 510.02(a) (“A civil action may involve other matters outside the Board jurisdiction and may consider broader issues beyond right to registration and, therefore, judicial economy is usually served by suspension”).

For the foregoing reasons, under 37 C.F.R. § 2.117(a) & (c), and for good cause shown, Herman Miller respectfully requests that the Board grant this Motion to Suspend the Opposition Proceeding pending the outcome of the District Court Action.

Dated: January 22, 2018

Respectfully submitted,

HERMAN MILLER, INC.

By its Attorneys,

/Luke W. DeMarte/

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CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2018, a true and correct copy of the foregoing Applicant's Motion to Suspend Opposition Proceeding Pending Civil Action is being served on Opposer's Attorney of Record via email at the following address:

David A. Dillard
Lewis Roca Rothgerber Christie LLP
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Dated: January 22, 2018

By: /Thomas A. Agnello/
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