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

Proceeding no.	91276661
Party	Plaintiff Tile Tech, Inc.
Correspondence address	MARK B. MIZRAHI FREEMAN FREEMAN AND SMILEY, LLP 1888 CENTURY PARK EAST 15TH FLOOR LOS ANGELES, CA 90067 UNITED STATES Primary email: patentsandtrademarks@ffslaw.com Secondary email(s): mark.mizrahi@ffslaw.com 310-255-6100
Submission	Motion to Suspend for Civil Action
Filer's name	Mark B. Mizrahi
Filer's email	patentsandtrademarks@ffslaw.com, mark.mizrahi@ffslaw.com
Signature	/mark b mizrahi/
Date	08/08/2022
Attachments	Motion for suspension in view of civil proceeding 91276661.pdf(163084 bytes) Exhibit A to Motion for Suspension 91276661.pdf(1919753 bytes)

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

In the matter of Application No. 90/830,655:

Tile Tech, Inc.,

Opposer,

v.

Hanover Prest-Paving Company DBA
Hanover Architectural Products,

Applicant.

Opposition No. 91276661

Opposed Trademark: American flag design

CONSENTED TO MOTION FOR SUSPENSION IN VIEW OF CIVIL PROCEEDING

The parties are engaged in a civil action which will have a bearing on this proceeding. Applicant, Hanover Prest-Paving Company DBA Hanover Architectural Products, a Pennsylvania corporation (“**Applicant**”), filed the civil action against opposer, Tile Tech, Inc. (“**Opposer**”). The case is currently pending. Accordingly, Opposer hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117. In support of this Motion, Applicant submits herewith **Exhibit A**, which is a copy of the Amended Complaint filed by Applicant. The civil action is pending in United States District Court, Middle District of Pennsylvania (Case 1:21-cv-00806-CCC) for, among other things, infringement of the same trademark that is at issue in Applicant’s application opposed herein. Applicant has consented to the filing of a motion for suspension.

Whenever it comes to the attention of the Board that the parties to a case before it are involved in a civil action which may be dispositive of the Board case, the proceedings before the Board may be suspended upon final determination of the civil action. TBMP § 510.02(a). A civil action need not be dispositive on the issues, however, for the Board to suspend

proceedings. Ordinarily, the Board will suspend proceedings in the case before it if the final determination of the other proceedings may have a bearing on the issues before the Board. TBMP § 510.02, citing 37 C.F.R. § 2.117(a); *see, e.g., New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 U.S.P.Q.2d 1550,1552 (TTAB 2011) (civil action need not be dispositive of Board proceeding, but only needs to have bearing on issues before the Board).

In the Amended Complaint, Applicant alleges willful, deliberate infringement of its American flag “trademark” by Opposer – the same trademark at issue in the opposed Application. Additionally, in the Complaint, Applicant seeks a determination by the District Court of priority and likelihood of confusion, and Opposer intends to assert defenses to Applicant’s allegations on the same or similar grounds to the grounds for relief set forth in Opposer’s Notice of Opposition in this proceeding.

Suspension of Board proceedings is within the discretion of the TTAB, and will generally be granted when a final decision of the court will likely be controlling on the issues to be decided by the TTAB. *In Whopper Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. 805, 807 (TTAB1971), the Board suspended proceedings, finding that “There can be no doubt ... that the outcome of the civil action will have a direct bearing on the question of the rights of the parties herein and may in fact completely resolve all the issues.” There can be no doubt that issues involved in the civil action are involved here.

Conclusion

In view of the fact that the pending civil action involves the determination of priority, likelihood of confusion, validity, and enforceability of Applicant’s trademark opposed herein, and those issues will impact the pending trademark application and the opposition to the same, the determination of these issues in the civil action will likely be dispositive of, or will at least have bearing on, this proceeding. Opposer therefore respectfully requests suspension of these proceedings pending determination of the civil action pursuant to Trademark Rule 2.117(a), 37 C.F.R. § 2.117(a).

Respectfully submitted,

FREEMAN, FREEMAN & SMILEY, LLP

By: /s/ Mark. B. Mizrahi
Mark B. Mizrahi
Attorneys/Agents for Opposer

Date: August 08, 2022

FREEMAN, FREEMAN & SMILEY, LLP
MARK B. MIZRAHI (CA BAR NO. 179384)
mark.mizrahi@ffslaw.com
1888 Century Park East, Suite 1500
Los Angeles, California 90067
Telephone: (310) 255-6100
Facsimile: (310) 255-6200

CERTIFICATE OF SERVICE

I certify that I served:

MOTION FOR SUSPENSION IN VIEW OF CIVIL PROCEEDING

on August 08, 2022 by:

_____ delivering
X emailing

a copy to:

Joseph R. Falcon III
BARLEY SNYDER
2 GREAT Valley Parkway
Suite 110
Malvern, Pennsylvania 19355
berwynpdocket@barley.com
jfalcon@barley.com

/s/
Mark Mizrahi

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