

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

Pabst Brewing Company,

Petitioner

v.

D.B. Miller, Inc.,

Registrant

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Cancellation No. 92045119

05-30-2006

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #26

PETITIONER'S MOTION TO SUSPEND FURTHER PROCEEDINGS

Pabst Brewing Company, Petitioner in the above-styled and numbered proceeding, hereby moves that all further proceedings in this cancellation be stayed pending resolution of Civil Action No. SA06CA0444 now pending in the United States District Court for the Western District of Texas, San Antonio Division. A true and correct copy of the Complaint in that action is attached hereto as Exhibit "A".

It is proper for the Trademark Trial and Appeal Board (the "Board") to suspend a pending cancellation once the Board is notified that the parties to the pending cancellation are involved in a civil action which may have a bearing on the Board case. *See* 37 CFR 2.117(a). Suspension of a cancellation proceeding based on a civil action brought in federal district court is especially appropriate based on the fact that a federal district court's decision is binding upon the Board, but the Board's decision is not binding upon a federal district court. TMBP 510.02(a); *Goya Foods Inc. v. Tropicana Products, Inc.*, 845 F.2d 848 (2nd Cir. 1988).

As indicated by the contents of the Complaint, the issues presented in Civil Action No. SA06CA0444 involve the Registrant's right to use the LONE STAR SPRINGS mark that is at issue in the pending cancellation. Because the issues to be resolved by the federal district court

have a bearing on the issues before the Board in the instant cancellation, and because the federal district court's decision will be binding on the Board, the Board should suspend the pending cancellation.

WHEREFORE, Applicant respectfully requests that the Board grant this Motion to Suspend Further Proceedings in its entirety, suspend this cancellation pending the final disposition of Civil Action No. SA06CA0444 now pending in the United States District Court for the Western District of Texas, San Antonio Division, and award Petitioner all such other and further relief to which it may be justly entitled.

RESPECTFULLY SUBMITTED,

Jackson Walker, L.L.P.
112 East Pecan St., Suite 2100
San Antonio, Texas 78205
(210) 978-7700
(210) 978-7790 (Fax)



William B. Nash, Reg. No. 33,743
ATTORNEYS FOR PETITIONER,
PABST BREWING COMPANY

CERTIFICATE OF SERVICE

I hereby certify by my signature below that the foregoing PETITIONER'S MOTION TO SUSPEND FURTHER PROCEEDINGS has been forwarded, via first class mail, in accordance with the Federal Rules of Civil Procedure on the 25th day of May, 2006, upon the following:

Trademark Trial and Appeal Board
United States Patent and Trademark Office
P. O. Box 1451
Alexandria, VA 22313-1451

Sandeep Seth
SETH & ASSOCIATES
6750 West Loop South, Suite 920
Houston, Texas 77401



William B. Nash

Exhibit “A”

RECEIVED

CIVIL COVER SHEET

JS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS: WESTERN DISTRICT OF TEXAS; BY: DEPUTY CLERK; (b) County of Residence of First Listed Plaintiff: Bexar; (c) Attorney's (Firm Name, Address, and Telephone Number): William B. Nash, Jackson Walker, L.L.P., 112 E. Pecan St., Suite 2400, San Antonio, Tx 78205 (210) 978-7700

DEFENDANTS: County of Residence of First Listed Defendant: Travis; NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED; SA 06CA 0444 OG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, PROPERTY RIGHTS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. § 1051 et seq.
Brief description of cause: Defendants making, selling, and distributing of LONE STAR Springs beverages infringes and dilutes Plaintiff's famous LONE STAR trademark rights.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$: Excess of jurisdictional limit
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE: May 24, 2006
SIGNATURE OF ATTORNEY OF RECORD: William B. Nash

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