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

Proceeding	92046666
Party	Defendant FIORDIFRUTTA LLC FIORDIFRUTTA LLC 353 CHRISTIAN STREET OXFORD, CT 06478
Correspondence Address	FIORDIFRUTTA LLC 353 CHRISTIAN STREET OXFORD, CT 06478 UNITED STATES
Submission	Motion to Suspend for Civil Action
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Signature	/Paul N. Tauger/
Date	01/09/2007
Attachments	Motion to Suspend Cancellation Proceeding.pdf (28 pages)(1032605 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Trademark Trial and Appeal Board

In the Matter of Registration No. 2,730,330
Issued June 24, 2003

RIGONI DI ASIAGO, SPA,)
)
Petitioner,)
v.)
) No. 92046666
FIORDIFRUTTA LLC,)
)
Registrant.)
)
_____)

MOTION TO SUSPEND CANCELLATION PROCEEDING

Respondents Fiordifrutta LLC and Rigoni USA, Inc. (collectively “Respondent”) hereby move the Trademark Trial and Appeal Board (hereinafter “TTAB” or “Board”) for an order, pursuant to 37 C.F.R. § 2.117(a), suspending the instant cancellation proceeding against Respondent. In support of its motion, Respondent states as follows:

SUMMARY OF FACTS

On January 9, 2007, Respondent filed a civil action against Petitioner in the United States District Court for the Southern District of Florida. Also named in that action is Rigoni di Asiago USA, LLC and Andrea Rigoni. Said civil action is comprised of, amongst others, federal claims of trademark infringement, trademark counterfeiting and unfair competition relating to the

Fiordifrutta trademark, U.S. Trademark Reg. No. 2,730,330. A true and correct copy of said filed District Court Complaint captioned *Rigoni USA, Inc. and Fiordifrutta LLC v. Rigoni di Asiago USA, LLC, Rigoni di Asiago, SPA and Andrea Rigoni*, C.A. No. 07-20070 is attached hereto as Exhibit A. A review of the complaint therein reveals that the civil action filed by Respondent involves issues that are directly in common with those issues in the instant cancellation action, mainly, who is the rightful owner of the right to use the mark Fiordifrutta, Registration No. 2,730,330.

ARGUMENT

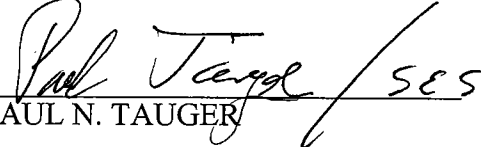
Because a decision of the federal district court would be binding upon the TTAB and a decision by the Board would not be binding or res judicata as to the issues before the court (see The Toro Company v. Hardigg Indus., Inc., 187 USPQ 689 (TTAB 1975); TBMP §510.02(a)), whenever it comes to the attention of the Board that parties to a pending case are involved in a civil action which may be dispositive of the TTAB case, the Board may, either by motion or on its own accord, suspend its case until there is a final determination of the civil action. See Careerxchange Inc. v. Corpnet Infohub Ltd., 80 USPQ2d 1046 (TTAB 2005); General Motors Corp. v. Cadillac Club Fashions Inc., 22 USPQ2d 1933 (TTAB 1992) (Board suspended proceedings following review of complaint in civil action which indicated that a decision by the district court would be dispositive of the issues in proceeding before the Board); 37 C.F.R. § 2.117(a); TBMP §510.02(a). Thus, inasmuch as the Federal District Court civil action involves issues common with the instant cancellation proceeding before the TTAB (i.e. rightful ownership of Fiordifrutta mark), Respondent believes that the District Court action is dispositive of issues

currently pending in the instant cancellation proceeding. See The Other Telephone Company v. Connecticut National Telephone Company, Inc., 181 USPQ 125 (TTAB 1974) (civil court action seeking court determination of respective rights of the parties to use in commerce a certain trademark found by TTAB to be dispositive of issues pending in proceeding before Board). Therefore, in an effort to avoid duplicative proceedings and potentially conflicting outcomes, suspension of the cancellation proceeding herein would be appropriate.¹

WHEREFORE, Respondent respectfully requests that the Trademark Trial and Appeal Board order a suspension of the instant cancellation proceeding.

Dated: January 9, 2007

SCHNADER HARRISON SEGAL & LEWIS LLP

By:  / SES
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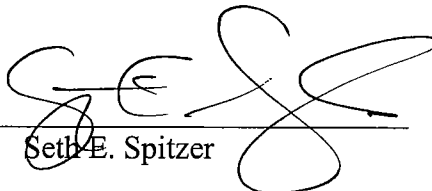
ATTORNEYS FOR RESPONDENT

¹ Because Respondent has not been served with a potentially dispositive motion, there can be no claim by Petitioner citing 37 C.F.R. § 2.117(b) that, by filing the within motion, Respondent is merely seeking to escape that motion by filing a civil action and then moving to suspend before the Board has decided the potentially dispositive motion. See 37 C.F.R. § 2.117(b).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION TO SUSPEND CANCELLATION PROCEEDING of Respondent Rigoni USA, Inc. and Fiordifrutta LLC was served via United States Mail this 9th day of January, 2007 upon:

Eric T. Fingerhut, Esq.
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004



Seth E. Spitzer

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