

ESTTA Tracking number: **ESTTA286529**

Filing date: **05/28/2009**

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

Proceeding	92050687
Party	Defendant Malava, LLC.
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Submission	Motion to Suspend for Civil Action
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Date	05/28/2009
Attachments	M1068 110 2 1 Motion to Suspend.pdf ( 76 pages )(3731575 bytes )

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

Innovative Beverage Group, Inc.

Petitioner,

vs.

Malava, LLC

Respondent.

Cancellation No. 92050687

Mark: THE ANTI-ENERGY DRINK

Reg. No.: 3,502,206

Issued: September 16, 2008

**MOTION TO SUSPEND CANCELLATION PROCEEDING**

Respondent Malava, LLC ("Malava" or "Respondent") moves to suspend the above-captioned cancellation proceeding pending disposition of Civil Action No. '09 CV0173WQH NLS filed in the United States District Court for the Southern District of California ("Federal Civil Action"). The Complaint in the Federal Civil Action alleges (1) Trademark Infringement (Lanham Act), (2) Federal Unfair Competition, False Designation of Origin, Passing Off, and False Advertising (Lanham Act), (3) False Advertising (Cal. Bus. & Prof. Code §§17500, *et seq.*), and (4) Unfair Business Practices (Cal. Bus. & Prof. Code §§17200, *et seq.*) against Innovative Beverage Group Holdings, Inc. ("IBGH").

**ISSUES IN BOTH PROCEEDINGS ARE RELATED.**

All four Counts of the Complaint involve the alleged unauthorized use of THE ANTI-ENERGY DRINK trademark by IBGH. This is the same designation as the subject mark of United States Trademark Registration No. 3,502,206 which is the registration sought to be cancelled by Petitioner in this pending proceeding. A copy of the Complaint filed in the Federal Civil Action has been attached as Exhibit A.

At least some, if not all, of the issues presented in the Federal Civil Action and the issues presented in this Cancellation involve the same dispute (i.e., Malava's claim of trademark rights in the subject mark of United States Trademark Registration No. 3,502,206 and IBGH/Petitioner's unauthorized use of THE ANTI-ENERGY DRINK trademark.

**THE PARTIES IN BOTH PROCEEDINGS ARE IDENTICAL OR RELATED.**

The plaintiff in the related Federal Civil Action and the Respondent in this cancellation proceeding are identical.

The defendant in the related Federal Civil Action (i.e., IBGH) and the Petitioner (i.e., Innovative Beverage Group, Inc.) in this cancellation proceeding are related. IBGH is a Nevada corporation with its principal place of business in Houston, Texas. See Declaration of Declaration of Peter Bianchi in Support of Motion to Stay ("Bianchi Decl.") attached hereto as Exhibit B<sup>1</sup>. According to the Bianchi Decl., IBGH is a "holding company" created to be the parent company of its other business units. One of these business units is the Petitioner, a subsidiary of IBGH. See Bianchi Decl.

In the Bianchi Decl., Mr. Bianchi confirms that the same management team controls both IBGH and Petitioner, and further concedes that IBGH and Petitioner are related entities. See Bianchi Decl.

**ARGUMENT.**

The Board will "ordinarily" suspend proceedings in the case before it if a final determination of a court proceeding "will have a bearing on the issues before the Board." Trademark, Trial and Appeal Board ("TBMP") § 510.02(a). See *General Motors Corporation v.*

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<sup>1</sup> The document attached as Exhibit B to this motion is the Declaration of Peter Bianchi in Support of Motion to Stay. This document, along with a related motion, was filed in the Federal Civil Action by IBGH in an attempt to stay the Federal Civil Action until this cancellation action has been resolved.

*Cadillac Club Fashions, Inc.*, 22 U.S.P.Q.2d 1933, 1937 (TTAB 1992) (TTAB suspending the proceeding when the decision by the district court in a related civil action would be dispositive of the case before it). Here, just as in *General Motors*, the issues necessarily decided by the district court in resolving Federal Civil Action will affect all pending trademark issues involved in this cancellation proceeding. The Federal Civil Action will clarify the rights of Malava in the subject mark of United States Trademark Registration No. 3,502,206, and the right of Petitioner to use THE ANTI-ENERGY DRINK designation.

Furthermore, the filing of this cancellation proceeding is nothing more than a transparent effort by IBGH/Petitioner to avoid liability for infringement of Malava's THE ANTI-ENERGY DRINK trademark. This cancellation was filed after the Federal Civil Action was initiated, and for the sole purpose of seeking a stay of the Federal Civil Action. This maneuver by IBGH/Petitioner should fail as an inappropriate attempt to interfere with Malava's right to enforce its trademark against an overt infringer. Moreover, "[t]o the extent that a civil action in a Federal District Court involves issues in common with those in a proceeding before the Board, the decision of the Federal District Court is binding upon the Board while the decision of the Board is not binding upon the Court." TBMP § 510.02(a) (citations omitted). Thus, suspension of this pending cancellation proceeding will promote judicial economy and the conservation of resources.

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Cancellation No. 92050687

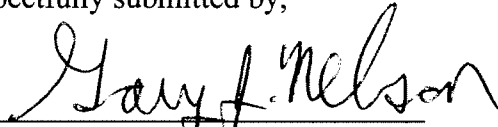
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Accordingly, it is respectfully requested that all further proceedings in Cancellation No. 92050687 be suspended pending disposition of the Federal Civil Action.

DATED: May 28, 2009

Respectfully submitted by,

By:   
Gary J. Nelson

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