

ESTTA Tracking number: **ESTTA278792**

Filing date: **04/17/2009**

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

Proceeding	92050698
Party	Defendant Bauer Bros.
Correspondence Address	Bauer Bros. 2925 Oceanside Blvd., Suite A Oceanside, CA 92054 UNITED STATES LBAUERCSUB@YAHOO.COM
Submission	Motion to Suspend for Civil Action
Filer's Name	Alexander E. Papaefthimiou
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Signature	/s/ Alexander E. Papaefthimiou
Date	04/17/2009
Attachments	suspend.mot.pdf (30 pages)(1210525 bytes)

Attorneys for Registrant BAUER BROS. LLC.

NIKE, INC.,

V.

Registrant /Respondent.

In the matter of Registration No. 3,171,585

Goods/Services: IC 025

[T.M.E.P. 510.02; 37 C.F.R. §2.117(a)]

The Complaint in the Federal Action was filed on March 12, 2009. These proceedings were

not filed until March 10, 2000

1 The Federal Action involves issues in common with these proceedings because it is an
2 action by Registrant against petitioner NIKE, INC. ("Petitioner") for, *inter alia*, infringement of the
3 trademark that is the subject of these proceedings, pursuant to 15 U.S.C. 1125(a) (Lanham Act
4 Section 43(a)).¹ The validity of the mark at issue in these proceedings will be at issue in the
5 Federal Action. In fact, Petitioner has filed Counterclaims in the Federal Action that assert the
6 invalidity of the mark at issue in these proceedings.

7 The District Court's decision in the Action will likely be binding upon the Board, while the
8 decision of the Board is not binding upon the District Court. *See* T.M.E.P. 510.02(a).

9 A file stamped copy of the Complaint in the Action is attached hereto as "Exhibit A."
10 Petitioner's Answer and Counterclaims for invalidity are attached hereto as "Exhibit B."

11 Dated: April 17, 2009

Respectfully submitted by:

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13 LAW OFFICES OF DARREN J. QUINN
14 DARREN J. QUINN
15 ALEXANDER E. PAPAETHIMIOU

16 
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20 *Attorneys for Respondent*

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24 ¹ "Section 43(a) protects qualifying **registered trademarks.**" *SoftMan Prods. Co. v.*
25 *Adobe Sys.*, 171 F. Supp. 2d 1075, 1092 fn 21 (C.D. Cal. 2001) *citing Two Pesos, Inc. v. Taco*
26 *Cabana, Inc.*, 505 U.S. 763, 768 (1992) (Emphasis added); *See, e.g., JBJ Fabrics, Inc. v. Mark*
27 *Industries, Inc.*, 5 U.S.P.Q.2D (BNA) 1414 at *34-*35 (C.D. Cal. 1987) ("Section 43(a) makes
28 certain types of unfair competition federal statutory torts, **whether or not** they involve
infringement of registered trademarks") (Emphasis added) *citing LeSportsac, Inc. v. K Mart*
Corp., 754 F.2d 71, 75 (2d Cir. 1985); *Carol Cable Co. v. Grand Auto, Inc.*, 4 U.S.P.Q.2D
(BNA) 1056 at *6 (N.D. Cal. 1987) (same).

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CERTIFICATE OF FILING

I hereby certify that the foregoing **MOTION TO SUSPEND FOR CIVIL ACTION** was filed with the TTAB using the ESTTA filing system on April 17, 2009.


Alexander E. Papaefthimiou

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 and am not a party to the within action; my business address is: 12702 Via Cortina, Suite 105, Del Mar, CA 92014.

I served the foregoing documents described as:

– **MOTION TO SUSPEND FOR CIVIL ACTION**

upon the interested parties in this action by placing

☒ copies enclosed in sealed envelopes to:

Kevin C. Parks, Esq.
Michelle L. Calkins, Esq.
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, 180 N. Stetson Ave., Suite 4900
Chicago, Illinois 60601-6731

Attorneys for Petitioner

☒ **VIA REGULAR MAIL** by depositing such envelope with United States Postal Service facility in Del Mar, California with postage fully prepaid.

I certify under penalty of perjury under the laws of the State of California and the laws of the United States that the foregoing is true and correct.

Dated: April 17, 2009 at Del Mar, California.



Alexander E. Papaefthimiou

EXHIBIT A

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