

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
Filer's e-mail	alex@dqlaw.com
Signature	/s/ Alexander E. Papaefthimiou
Date	04/17/2009
Attachments	suspend.mot.pdf ( 30 pages )(1210525 bytes )



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)).<sup>1</sup> 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:

12  
13 LAW OFFICES OF DARREN J. QUINN  
14 DARREN J. QUINN  
15 ALEXANDER E. PAPAETHIMIOU

16   
Alexander E. Papaefthimiou

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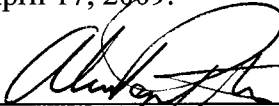
20 *Attorneys for Respondent*

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25 <sup>1</sup> "Section 43(a) protects qualifying **registered trademarks.**" *SoftMan Prods. Co. v.*  
26 *Adobe Sys.*, 171 F. Supp. 2d 1075, 1092 fn 21 (C.D. Cal. 2001) *citing Two Pesos, Inc. v. Taco*  
27 *Cabana, Inc.*, 505 U.S. 763, 768 (1992) (Emphasis added); *See, e.g., JBJ Fabrics, Inc. v. Mark*  
28 *Industries, Inc.*, 5 U.S.P.Q.2D (BNA) 1414 at \*34-\*35 (C.D. Cal. 1987) ("Section 43(a) makes  
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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