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Filing date: **05/18/2009**

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

| | |
|------------------------|---|
| Proceeding | 92050777 |
| Party | Defendant Falls Media LLC |
| Correspondence Address | Falls Media LLC Apt. 11E, 565 Park Avenue New York, NY 10021 UNITED STATES |
| Submission | Other Motions/Papers |
| Filer's Name | Bobby A. Ghajar |
| Filer's e-mail | ghajarb@howrey.com |
| Signature | /s/ Bobby A. Ghajar |
| Date | 05/18/2009 |
| Attachments | Notice of Motion and Motion to Suspend.pdf (88 pages)(4187913 bytes) |

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

ZOBMONDO ENTERTAINMENT, LLC,

Petitioner/Opposer,

v.

FALLS MEDIA, LLC,

Registrant/Applicant.

**NOTICE OF MOTION AND MOTION TO
SUSPEND PURSUANT TO 37 CFR § 2117(a)
and TBMP § 510.02(a)**

Cancellation No: 92050777

Serial No.: 78979939

Registration Date: June 17, 2008

Classes: 9, 16

Opposition No.: 91189805

Serial No.: 77616271

Published: March 24, 2009

Classes: 9, 38

Opposition No.: 91189785

Serial No.: 77504513

Published: March 17, 2009

Class: 25

Opposed/Applicant Mark: WOULD YOU
RATHER...?

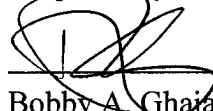
TO: ZOBMONDO ENTERTAINMENT, LLC.

PLEASE TAKE NOTICE that Registrant/Applicant Falls Media, LLC hereby moves the Trademark Trial and Appeal Board to suspend the above proceedings.

This motion will be based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, and the Declaration of Bobby A. Ghajar and Exhibits A-D, filed herewith and all evidence presented.

Date: May 18, 2009

Respectfully submitted,



Bobby A. Ghajar, Esq.

HOWREY-LLP

550 S. Hope Street, Suite 1100

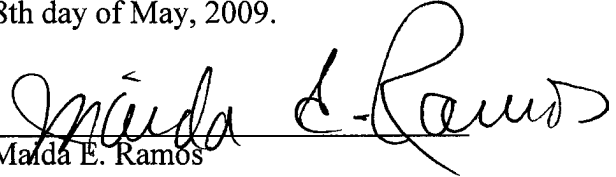
Los Angeles, CA 90071

Telephone: (213) 892-1800

Attorneys for Registrant/Applicant
FALLS MEDIA, LLC

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing "Notice of Motion and Motion to Suspend Pursuant to 37 CFR § 2117(a) and TBMP § 510.02(a)" was mailed by First Class Mail, postage prepaid to Lawrence Y. Iser, Kinsella Weitzman Iser Kump and Aldisert, LLP, 808 Wilshire Blvd., Suite 300, Santa Monica, CA 90401, on this 18th day of May, 2009.


Maida E. Ramos

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

| | | | |
|------------------------------|---|---|----------------------------------|
| ZOBMONDO ENTERTAINMENT, LLC, | } | MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SUSPEND PURSUANT TO 37 CFR § 2117(a) and TBMP § 510.02(a) | |
| Petitioner/Opposer, | | | |
| v. | | | |
| FALLS MEDIA, LLC, | | | Cancellation No: 92050777 |
| | | | Serial No.: 78979939 |
| | | | Registration Date: June 17, 2008 |
| Registrant/Applicant. | | | Classes: 9, 16 |
| | | | Opposition No.: 91189805 |
| | | | Serial No.: 77616271 |
| | | | Published: March 24, 2009 |
| | | Classes: 9, 38 | |
| | | Opposition No.: 91189785 | |
| | | Serial No.: 77504513 | |
| | | Published: March 17, 2009 | |
| | | Class: 25 | |
| | | Opposed/Applicant Mark: WOULD YOU RATHER...? | |

Pursuant to 37 CFR § 2.117(a) and TBMP § 510.02(a), Registrant/Applicant Falls Media, LLC (“Falls Media”) hereby requests that the Trademark Trial and Appeal Board (“TTAB” or “Board”) suspend Cancellation No. 92050777, and Opposition Nos. 91189805 and 77504513 until the final determination of the related appeal currently pending before the U.S. Court of Appeals for the Ninth Circuit.

Factual Background

Falls Media was formed by Justin Heimberg and David Gomberg (“Justin & Dave”) in 2004 after Justin and Dave had worked together for several years. In 1997, Justin and Dave published a book called “Would You Rather . . . ? Over 200 Absolutely Absurd Dilemmas to Ponder.” The same year, Justin and Dave sought trademark protection for WOULD YOU RATHER...? in Classes 16 and 28 (books and comic strips; and card games and board games, respectively). Zobmondo Entertainment, LLC (“Zobmondo”) filed an opposition against the

application, which was later dismissed with prejudice. Falls Media timely filed extensions of time to file its Statement of Use, and perfected the application in Fall 2004. The USPTO awarded Falls Media U.S. Trademark Registration No. 2,970,830 on July 19, 2005 for the WOULD YOU RATHER. . .? mark in Classes 16 and 28.

About a year after the USPTO issued to Falls Media the '830 registration, Falls Media sued Zobmondo for trademark infringement in the United States District Court, Southern District of New York. *Falls Media, LLC et al. v. Zobmondo!! Entertainment, LLC, et al.*, S.D.N.Y. Case No. 06v4281 (JSR). Zobmondo counterclaimed for cancellation of the 2,970,830 trademark on the basis that the mark is descriptive and lacks secondary meaning. Zobmondo also asserted a Section 1120 claim for damages by fraudulent procurement of the '830 registration. Falls Media's New York case was consolidated with a case filed by Zobmondo in the Central District of California, which claimed trade dress and copyright infringement of a "Would You Rather...?" branded board game that Zobmondo created after Justin & Dave's WOULD YOU RATHER...? books were published. *Zobmondo Entertainment, LLC v. Falls Media, et al.*, C.D. Cal. Case No. CV06-3459 (JTLx). Zobmondo also counterclaimed for trademark infringement and unfair competition.

In the consolidated action, both parties moved for summary judgment. *Zobmondo Entertainment, LLC v. Falls Media, et al.*, C.D. Cal. Case No. CV07-0571 ABC (JTLx). The court granted summary judgment in favor of Falls Media, finding that Zobmondo's trade dress and copyrights were not infringed. *See* Declaration of Bobby A. Ghajar ("Ghajar Decl."), Exhibits A and D. The court also granted summary judgment to Zobmondo on Falls Media's trademark infringement and unfair competition claims, and similarly ruled that Zobmondo's trademark infringement and unfair competition claims against Falls Media should be dismissed. *Id.* The court further ordered Falls Media's Trademark Registration No. 2,970,830 cancelled on

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