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Filing date: **10/15/2010**

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

Proceeding	92051115
Party	Plaintiff Playdom, Inc.
Correspondence Address	Derek A. Eletich Law Office of Derek A. Eletich 155 Forest Avenue Palo Alto, CA 94301 UNITED STATES derek@eletichlaw.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Derek A. Eletich
Filer's e-mail	derek@eletichlaw.com
Signature	/Derek A. Eletich/
Date	10/15/2010
Attachments	Motion.pdf ( 3 pages )(162579 bytes ) Exhibit A.pdf ( 30 pages )(937777 bytes )

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

In the Matter of Registration No. 3560701  
For the Mark PLAYDOM  
Issued on January 13, 2009

PLAYDOM, INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Cancellation No. 92051115
	)	
DAVID COUTURE,	)	
	)	
Registrant.	)	

**PETITIONER'S MOTION TO SUSPEND PROCEEDINGS FOR CIVIL ACTION**

Petitioner PLAYDOM, INC. ("Playdom") respectfully requests that the Board suspend this cancellation proceeding pending final disposition of a civil action before the U.S. District Court for the District of New Hampshire, *David Couture v. Playdom, Inc.*, Civil Action No. 10-CV-440 (the "Action"), which was filed by Registrant DAVID COUTURE ("Couture") against Playdom on September 28, 2010. See Trademark Rule 2.127(a) and 2.117(a), 37 C.F.R. §§ 2.127(a) and 2.117(a). A true and correct copy of Complaint and Civil Cover Sheet filed by Couture in the Action are attached as Exhibit A hereto.

Both Playdom and Couture are parties to the Action, which involves common issues of law and fact that may have a bearing on this cancellation proceeding. In particular, the Action involves claims of, among other things, trademark infringement, false designation of origin, and common law trademark infringement concerning the marks and services at issue in this case. Further, in the Action, Couture has alleged rights in U.S. Registration No. 3560701, which is the subject of this cancellation proceeding. In view of the common issues of law and fact between

the Action and the pending cancellation proceeding, any decision of the district court may have a bearing on the outcome of this case. See TBMP § 510.

Accordingly, Playdom respectfully requests that this cancellation proceeding be suspended pending final determination of the Action. Playdom respectfully requests that, upon resumption of this cancellation proceeding, Playdom's testimony period be reset for a period of thirty (30) days from the mailing date of the Board's resumption order.

Dated: October 15, 2010

  
DEREK A. ELETICH

Law Office of Derek A. Eletich  
155 Forest Avenue  
Palo Alto, CA 94301-1615  
Telephone: (650) 804-1484  
E-mail: derek@eletichlaw.com

Attorney for Petitioner  
PLAYDOM, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing PETITIONER'S MOTION TO SUSPEND PROCEEDINGS FOR CIVIL ACTION has been served upon the attorney for Registrant by depositing same with the United States Postal Service as first class mail in an envelope addressed as follows on October 15, 2010:

Richard N. Foley  
55 Market Street, Suite 2B  
Portsmouth, NH 03801

  
DEREK A. ELETICH

**CIVIL COVER SHEET**

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

**I. (a) PLAINTIFFS**

(b) County of Residence of First Listed Plaintiff LOS ANGELES  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
ROSCARD N. FOLEY 55 MARKET ST. 29  
PORTSMOUTH N.H. 03801 603 493 1303

**DEFENDANTS**

U.S. DISTRICT COURT  
DISTRICT OF N.H.  
County of Residence of First Listed Defendant SANTA CLARA  
2010 SEP 28 10 26 AM U.S. DISTRICT COURT (ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Thrd Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1331 + 1332  
Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
- DEMAND \$ \_\_\_\_\_
- CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions). JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 9/28/10 SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_



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