

ESTTA Tracking number: **ESTTA392576**

Filing date: **02/09/2011**

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

Proceeding	92053383
Party	Defendant Heather Daniels
Correspondence Address	HEATHER DANIELS 22682 BRIDLE TRAIL KILDEER, IL 60047 UNITED STATES
Submission	Motion to Suspend for Civil Action
Filer's Name	Jason A. Berta
Filer's e-mail	jberta@foley.com, sszczepanski@foley.com, mboldingh@foley.com, jolsen@foley.com
Signature	/JasonBerta/
Date	02/09/2011
Attachments	Motion to Suspend - Memo - Ex 1 and 2.pdf ( 145 pages )(9625533 bytes )

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

SPENCER GIFTS, LLC

Petitioner,

v.

Cancellation No. 92053383  
Registration No. 3,888,346

HEATHER DANIELS,

Respondent.

**RESPONDENT'S MOTION TO SUSPEND CANCELLATION PROCEEDING**

Respondent, Heather Daniels, by and through her attorneys, Foley & Lardner LLP, moves the Board to suspend the above-identified cancellation proceeding pending final determination of the civil action pending in the District Court for Northern District of Illinois, Eastern Division, Civil Action No. 10-cv-05345 ("Illinois Lawsuit"). Count III of the First Amended Complaint is for infringement of Respondent's mark which is the subject of this cancellation proceeding. *See* Exhibit L to the attached Exhibit 1. A copy of the First Amended Complaint and Respondent's Answer to the Amended Complaint are attached to this motion as Exhibits 1 and 2, respectively.

The issues involved in the Illinois Lawsuit overlap with those before the Board. A decision by the United States District Court is binding on the Board, while the decision of the Board is not binding on the court. Accordingly, to avoid duplication of proceedings and to promote judicial economy, the above-identified cancellation proceeding should be stayed pending the final determination of the Illinois Lawsuit.

The grounds supporting the motion to suspend are set forth in more detail in the accompanying memorandum.

Dated: February 9, 2011

Respectfully Submitted,

/s/ Jason A. Berta

S.Z. Szczepanski

Mary Jo Boldingh

Jason A. Berta

FOLEY & LARDNER LLP

321 North Clark Street

Suite 2800

Chicago, Illinois 60654

(312) 832-4500

Attorneys For Respondent

Heather Daniels

CERTIFICATE OF SERVICE

I, Jason A. Berta, an attorney, hereby certify that on February 9, 2011, I caused a true and correct copy of the attached RESPONDENT'S MOTION TO SUSPEND CANCELLATION PROCEEDING to be served upon the below listed counsel for Spencer Gifts, LLC on the date stated above via email and First Class U.S. mail postage prepaid:

Roberta Jacobs-Meadway  
Eckert Seamans Cherin & Mellott  
50 S. 16<sup>th</sup> St, Floor 22  
Two Liberty Place  
Philadelphia, PA 19102  
[rjacobsmeadway@eckertseamans.com](mailto:rjacobsmeadway@eckertseamans.com)

John T. Gabrielides  
Brinks Hofer Gilson & Lione  
NBC Tower – Ste. 3600  
455 N. Cityfront Plaza Dr  
Chicago, IL 60611-5599  
[jtg@brinkshofer.com](mailto:jtg@brinkshofer.com)

/s/ Jason A. Berta

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SPENCER GIFTS, LLC

Petitioner,

v.

Cancellation No. 92053383  
Registration No. 3,888,346

HEATHER DANIELS,

Respondent.

**MEMORANDUM IN SUPPORT OF  
RESPONDENT'S MOTION TO SUSPEND CANCELLATION PROCEEDING**

Respondent, Heather Daniels, files this memorandum of law in support of Respondent's Motion to Suspend Cancellation Proceeding ("Motion to Suspend"). For the reasons set forth below, the Board should suspend the above-identified cancellation proceeding pending final determination of the civil action pending in the United States District Court for Northern District of Illinois, Eastern Division, Civil Action No. 10-cv-05345 ("Illinois Lawsuit").

**I. FACTS**

On August 20, 2010, Daniels and her company Urban Bratz sued Petitioner Spencer Gifts LLC and other defendants in the United States District Court for the Northern District of Illinois for copyright infringement and violation of the Lanham Act. On November 22, 2010, Daniels and Urban Bratz filed a First Amended Complaint against Spencer Gifts, LLC and the other defendants adding claims for infringement of Respondent's Mark. The First Amended Complaint is attached as Exhibit 1 to Respondent's Motion. Specifically, in Count III of her first amended complaint, Respondent requests that the United States District Court for the Northern District of Illinois declare that the actions of Petitioner Spencer Gifts, LLC and other defendants

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