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

Proceeding	92053560
Party	Defendant Sabine Niederberghaus-Lesavoy
Correspondence Address	GRANT T LANGTON CONNOLLY BOVE LODGE & HUTZ LLP 333 SOUTH GRAND AVENUE, SUITE 2300 LOS ANGELES, CA 90071 UNITED STATES trademarks@cblh.com
Submission	Motion to Suspend for Civil Action
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Signature	/victor sapphire/
Date	04/06/2011
Attachments	MO TO STAY.pdf (2 pages)(216768 bytes) Complaint CV11-02736-DDP(FFMx).pdf (35 pages)(9066537 bytes) AO-120 Report on the Filing of an Action CV11-02736-DDP(FFMx).pdf (1 page)(38376 bytes)

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

Nemsi Books,

Petitioner,

v.

Sabine Niederberghaus-Lesavoy

Registrant

Cancellation No. 92053560

Registration No. 3,801,207

REGISTRANT'S MOTION TO STAY PROCEEDING

Pursuant to Rule 2.117 of the Trademark Rules of Practice (37 C.F.R. §2.117), and T.T.A.B. Manual of Procedure §510.02, Registrant Sabine Niederberghaus-Lesavoy ("Registrant") hereby moves for stay of the captioned Cancellation proceeding pending disposition of the law suit filed on March 31, 2011 in United States District Court for the Central District of California by Registrant against Petitioner for declaratory judgment, trademark infringement, passing off, unfair competition, false designation of origin, cybersquatting, and violation of California Business and Professions Code Section 17200 et. seq. A copy of the filed-stamped Complaint, Case No. CV11-02736-DDP(FFMx) is attached to this Motion.

The federal court litigation includes, among others, a claim for declaratory relief concerning the validity of Registration No. 3,801,207, which is the subject of the instant Cancellation proceeding. For this reason, the federal court litigation will have a bearing on the issues before the Board, and it is therefore appropriate for the Board to stay the Cancellation proceeding on that basis.

Accordingly, Registrant hereby requests that the instant Cancellation proceeding be stayed pending the outcome of civil action Case No. CV11-01736-DDP(FFMx).

Dated: April 6, 2011

By:



Victor K. Sapphire, Esq.
Connolly Bove Lodge & Hutz LLP
333 S. Grand Ave., Suite 2300
Los Angeles, California 90071
(213) 787-2523

ATTORNEYS FOR REGISTRANT

CERTIFICATE OF SERVICE

I certify that a copy of the REGISTRANT'S MOTION TO STAY PROCEEDING was sent via First Class Mail this 6th day of April, 2011 to:

Nemsi Books
307 West Third Street, PO Box 191
Pierpont, South Dakota 57468-0191


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6 Attorneys for Plaintiffs
KARL MAY USA, INC. and
7 SABINE NIEDERBERGHAUS-LESAVOY

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 **CV11 02736 DDP**

Case No.

(FFMx)

11 KARL MAY USA, INC., a California
corporation, and SABINE
12 NIEDERBERGHAUS-LESAVOY, a
United States and German citizen,

13 Plaintiffs,

14 v.

15 NEMSI BOOKS; NEMSI BOOKS, LLC;
16 WINNETOU PRODUCTIONS LLC;
MORPHTEK.COM, INC.; and DOES 1
17 through 10,

18 Defendants.

**COMPLAINT FOR
DECLARATORY JUDGMENT,
TRADEMARK
INFRINGEMENT, PASSING
OFF, UNFAIR COMPETITION,
FALSE DESIGNATION OF
ORIGIN, CYBERSQUATTING,
AND VIOLATION OF CAL.
BUS. & PROF. CODE §§ 17200
ET SEQ.**

BY: _____
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1 For their Complaint, Plaintiffs allege that:

2 **Introduction**

3 1. This is an action for a declaration of rights under the Trademark Act of
4 1946, as amended (the “Lanham Act”), 15 U.S.C. §§ 1051 *et seq.* Specifically,
5 Plaintiff Sabine Niederberghaus-Lesavoy seeks a declaration from this Court that
6 her federal registration of the mark WINNETOU, U.S. Reg. No. 3,801,207, is valid
7 and subsisting, and enforceable against third parties that infringe upon the rights
8 granted therein.

9 2. This action also includes claims for infringement and interference
10 arising out of Defendants’ willful, bad faith activities in violation of Plaintiffs’
11 rights inuring in the foregoing federal registration and common law.

12 3. A case or actual controversy within this Court’s jurisdiction exists
13 between the parties concerning their respective trademark and related rights as set
14 forth below. This Court is authorized to declare the rights of the parties in this case
15 pursuant to the Federal Declaratory Judgment Act 28 U.S.C. §§ 2201-2202.

16 **The Parties**

17 4. Plaintiff Sabine Niederberghaus-Lesavoy (“Niederberghaus-Lesavoy”)
18 is a California resident and citizen of the United States and Germany with her
19 principal place of residence at 2535 Hawks Nest Trail, Topanga, California.

20 5. Plaintiff Karl May USA, Inc. is a California corporation having its
21 principal place of business at 16311 Ventura Boulevard, Suite 555, Encino,
22 California, and is owned by Plaintiff Niederberghaus-Lesavoy.

23 6. For the past several years, Plaintiffs have been in the business of
24 developing and producing films and audiovisual entertainment, and developing and
25 selling ancillary goods related thereto. Since at least as early as February 2010,
26 Plaintiffs have been in the business of developing and producing motion picture
27 films in the nature of action adventure and family films, theatrical productions,
28 television programs and other performances, as well as the production and

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