

ESTTA Tracking number: **ESTTA952838**

Filing date: **02/07/2019**

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

Proceeding	92065939
Party	Plaintiff Sportspower Limited
Correspondence Address	CLEMENT CHENG NEWHOPE LAW PC 4522 KATELLA AVE SUITE 200 LOS ALAMITOS, CA 90720 UNITED STATES law@clemcheng.com 714-825-0555
Submission	Motion to Suspend for Civil Action
Filer's Name	Clement Cheng
Filer's email	law@clemcheng.com
Signature	/Clement Cheng/
Date	02/07/2019
Attachments	Motion for Suspension Pending Outcome of Another Proceeding.pdf(13629 bytes) A Plaintiff Original Complaint.pdf(389275 bytes)

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

In the matter of Trademark Registration No. 5,152,625

International Class: 28

Registrant: Li-Ju Hsiang

Trademark: JP JUMP POWER

Registered: February 28, 2017

<p>SPORTSPOWER LIMITED</p> <p style="text-align:center">Petitioner,</p> <p style="text-align:center">v.</p> <p>LI-JU HSIANG</p> <p style="text-align:center">Registrant.</p>	<p>Cancellation No. 92065939</p> <p>Registration No. 5,152,625</p>
--	--

MOTION FOR SUSPENSION

PENDING OUTCOME OF ANOTHER PROCEEDING

Sportspower Ltd. ("Petitioner"), petitioned to cancel the JP JUMP POWER and design mark on April 17, 2017. Since the original filing of the petition to cancel, the dispute has grown beyond the bounds of the subject matter jurisdiction of the Trademark Trial And Appeal Board to a larger controversy involving multiple intellectual property issues.

The petitioner filed a lawsuit in the United States District Court for the Eastern District of Texas alleging patent infringement, trademark infringement and unfair competition on January 30, 2019 as case Civil Action No. 4:19-CV-00066. The complaint is attached as Exhibit A to this Motion. Plaintiff Sportspower Ltd. ("Sportspower") asserts claims against Defendant Crowntec Fitness Mfg. Ltd. ("Crowntec") for trademark infringement in violation of 15 U.S.C. § 1114 (Section 32 of the Lanham Act), unfair competition in violation of 15 U.S.C. § 1125(a)(1)(A) (Section 43(a)(1)(A) of the Lanham

Act), patent infringement under 35 U.S.C. § 1 et seq. as well as trademark infringement, unfair competition, and unjust enrichment under Texas law.

Although the petitioner also requests cancellation of Trademark Registration No. 5,152,625 in the District Court complaint, the cancellation of the registration is only a small part of the entire case and controversy. In the interest of judicial economy, the present proceeding should be suspended until the disposition of the federal court case. The federal court case involves the mark at issue in this case, namely the JP JUMP POWER logo, but also involves the various uses of JUMP POWER beyond the scope of this present proceeding before the Trademark Trial And Appeal Board.

TBMP 510.02(a) states:

"Whenever it comes to the attention of the Board that a party or parties to a case pending before it are involved in a civil action that may have a bearing on the Board case, proceedings before the Board may be suspended until final determination of the civil action. [Note 1.]

Most commonly, a request to suspend pending the outcome of another proceeding seeks suspension because of a civil action pending between the parties in a federal district court. Although the Supreme Court held that issue preclusion can be based on a decision by the Board in a case in which the ordinary elements of issue preclusion are met, the Board's policy to suspend in favor of a civil action has not changed. A civil action may involve other matters outside Board jurisdiction and may consider broader issues beyond right to registration and, therefore, judicial economy is usually served by suspension. [Note 2.]

Further, pursuant to 37 C.F.R. § 2.117(a), the Board may also, in its discretion, suspend a proceeding pending the final determination of another Board proceeding in which the parties are involved [Note 3.], or a civil action pending between the parties in a state court [Note 4.], or a foreign action between the parties, wherein one party challenges the validity of a foreign registration upon which the other party's subject application is based [Note 5.],

or an arbitration pending between the parties [Note 6.], or even another proceeding in which only one of the parties is involved. [Note 7.]

Unless there are unusual circumstances, the Board will suspend proceedings in the case before it if the final determination of the other proceeding may have a bearing on the issues before the Board. [Note 8.]"

Because the petitioner filed the lawsuit in United States District Court seeking injunctive relief, and raising a number of various related issues, it would also be more cost-effective for the Board to suspend this action to avoid a duplication of litigation in separate forums. Even though there would be issue preclusion based on a decision by the Board, such issue preclusion would be so narrow that it would not materially affect the overall dispute between the parties.

Li-Ju Hsiang (Registrant) is a principal and officer of Crowntec. Petitioner Sportspower believes that Crowntec is the real party in interest in this TTAB case because Crowntec used the mark and continues to use the mark. Registrant Li-Ju Hsiang, a natural person, produced a person most knowledgeable namely Jeff Daprizio their sales representative in the US in response to Sportspower's notice of deposition in this case. Thus, Crowntec Fitness Mfg. Ltd. agrees they are the real party in interest in this case.

A suspension would not unfairly prejudice the registrant, and would not materially affect the procedure of this matter. A suspension would save both the Petitioner and Registrant time and attorneys fees in addition to providing attorneys fees. It would be more unfair to allow multiple simultaneous actions against the registrant. If the board cannot suspend this proceeding, the petitioner alternatively requests that the Board dismiss the petition without prejudice so as to avoid duplication of litigation and its related costs and fees.

Thus, Petitioner respectfully requests that the proceeding be suspended.

DATED: February 7th, 2019

NEWHOPE LAW, PC

/Clement Cheng/

Clement Cheng, Esq.

4522 Katella Ave 200

Los Alamitos, CA 90720

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the forgoing document has been emailed to: mailroom@mg-ip.com

/Clement Cheng/_____

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.