

ESTTA Tracking number: **ESTTA846438**

Filing date: **09/18/2017**

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

Proceeding	92066877
Party	Defendant Spin80, Inc.
Correspondence Address	SPIN80 INC 6191 NW 66 AVE PARKLAND, FL 33067 UNITED STATES
Submission	Motion to Suspend for Civil Action
Filer's Name	Darren Heitner
Filer's email	darren@heitnerlegal.com, alan@heitnerlegal.com
Signature	/Darren Heitner/
Date	09/18/2017
Attachments	Motion for Suspension w Exhibits.pdf(444617 bytes)

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

In the Matter of Trademark Registration No. **5189704**
For the mark: **MODE NUTRITION**
Registered: **April 25, 2017**

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MODE LLC,

Petitioner,

Cancellation No. 92066877

SPIN80, INC.

Registrant

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MOTION FOR SUSPENSION IN VIEW OF CIVIL PROCEEDING

Pursuant to Trademark Trial and Appeal Board Manual of Procedure § 510.02(a) and 37 CFR § 2.117(a), SPIN80, INC. (“Registrant”) hereby requests that Cancellation Proceeding No. 92066877 (the “Cancellation”) be suspended pending the outcome of civil action Case No.: 17-cv-61793, pending before the United States District Court, Southern District of Florida, as further set forth below, and, in support thereof, states as follows:

1. On September 14, 2017, Registrant filed civil action Case No.: 17-cv-61793 (the “Civil Action”), wherein Registrant and MODE LLC (“Petitioner”) were listed as named parties therein.
2. Registrant believes that the issues set forth in the Civil Action will have direct bearing on the issues presented in the Cancellation.

3. A true and correct copy of the Complaint (without exhibits) and Cover Sheet filed in the Civil Action is attached hereto as **Exhibit A**. Notice of the Civil Action has been provided by undersigned counsel to counsel for the Petitioner.

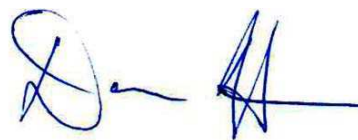
4. If the parties engaged in a proceeding before the Trademark Trial and Appeal Board (TTAB) are or become involved in a civil action during the pendency of such proceeding involving the same or similar marks, or involving any issue of law or fact that are also in such proceeding, the TTAB must be notified immediately. *See* Trademark Rule § 2.106(b)(3)(i). Upon notification, the TTAB shall consolidate and/or suspend related TTAB proceedings, as appropriate. *See* Trademark Rule 2.117(c); TBMP §§ 510 and 511.

5. Furthermore, TTAB may suspend proceedings when the parties engaged in such proceeding are also engaged in a civil action that may have a bearing on the proceeding. *See* Trademark Rule § 2.117(a); TBMP § 510.02(a).

6. Here, the Civil Action involves the same marks at issue in the Cancellation, and the parties to the Cancellation are also parties to the Civil Action. Moreover, the Civil Action seeks declaratory relief regarding whether Petitioner has prior use regarding the marks at issue, or, alternatively, if Registrant's Registered Mark is substantially similar to the mark for which Petitioner claims common law trademark rights in. Thus, as the issues that are the subject of the Civil Action directly relate on the issues and allegations contained in the Cancellation, Registrant respectfully requests that the Cancellation be suspended immediately.

September 18, 2017

Respectfully Submitted,

A handwritten signature in blue ink, consisting of a stylized initial 'D' followed by a horizontal line and a vertical stroke.

DARREN A. HEITNER
Attorney for Registrant
Florida Bar No. 85956
Heitner Legal, PLLC
215 Hendricks Isle
Fort Lauderdale, FL 33301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing motion is being deposited with U.S. mail for service, or is being served via email, to listed correspondent of record for Petitioner:

Katherine M. Basile

Reed Smith LLP 1510 Page Mill Road, #110 Palo Alto, CA 94304 (650) 352-0500

Email: KBasile@reedsmith.com

Attorneys for Opposer, MODE LLC

EXHIBIT A

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