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

Proceeding	92067080
Party	Defendant Sinomax USA Inc.
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Submission	Motion to Suspend for Civil Action
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Date	11/20/2019
Attachments	Motion to Suspend Pending Outcome of Federal Proceeding 11-20-19.PDF(95820 bytes) Ex A CVBs first complaint.PDF(3338736 bytes) Ex B CVBs first amended complaint.PDF(1383079 bytes)

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

CVB Inc.,

Petitioner,

v.

Sinomax USA Inc.,

Registrant.

Mark: ZGEL

Reg. No.: 4860694

Issued: November 24, 2015

Cancellation No. 92067080

MOTION TO SUSPEND PENDING OUTCOME OF FEDERAL CIVIL PROCEEDING

Registrant, Sinomax USA Inc. (“Registrant”), through its attorneys, Parker Ibrahim & Berg LLP, and owner of the mark ZGEL, Reg. No. 4860694, hereby submits this Motion to Suspend Pending the Outcome of a Federal Civil Complaint filed by Petitioner, CVB, Inc. (“CVB”) in The United States District Court, District of Utah, pursuant to TBMP § 510.02(a) and 37 C.F.R. § 2.117(a).

CVB filed a complaint in the District Court on August 19, 2019, Civil Action No. 1:19-CV-00094, and a courtesy copy was emailed to the undersigned on August 20, 2019. See Exhibit A (“CVB’s First Complaint”). CVB then filed a First Amended Complaint on November 6, 2019, Civil Action No. 1:19-CV-00094-EJF, but did not send any courtesy copy or notification of the Amended Complaint to the undersigned, or to Registrant. See Exhibit B (“CVB’s First Amended Complaint”). CVB’s First Amended Complaint was served on Registrant’s registered agent for service of process, CT Trust Company, on November 15, 2019.

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. TBMP § 510.02(a). See also 37 C.F.R. § 2.117(a). See also *General Motors Corp. v. Cadillac Club Fashions Inc.*, 22 USPQ2d 1933, 1936-37 (TTAB 1992); *Toro Co. v. Hardigg Industries, Inc.*, 187 USPQ 689, 692 (TTAB 1975), *rev'd on other grounds*, 549 F.2d 785, 193 USPQ 149 (CCPA 1977); *Other Telephone Co. v. Connecticut National Telephone Co.*, 181 USPQ 125, 126-27 (TTAB 1974); *petition denied*, 181 USPQ 779 (Comm'r 1974); *Tokaido v. Honda Associates Inc.*, 179 USPQ 861, 862 (TTAB 1973); *Whopper-Burger, Inc. v. Burger King Corp.*, 171 USPQ 805, 806-07 (TTAB 1971).

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. TBMP § 510.02(a). See also 37 C.F.R. § 2.117(a). See also, e.g., *New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 USPQ2d 1550, 1552 (TTAB 2011) (civil action need not be dispositive of Board proceeding, but only needs to have a bearing on issues before the Board); *General Motors Corp v. Cadillac Club Fashions, Inc.*, 22 USPQ2d 1933, 1936-37 (TTAB 1992) (relief sought in federal district court included an order directing Office to cancel registration involved in cancellation proceeding); *Other Telephone Co. v. Connecticut National Telephone Co.*, 181 USPQ 125, 126-27 (TTAB 1974) (decision in civil action for infringement and unfair competition would have bearing on outcome of Trademark Act § 2(d) claim before Board), *pet. denied*, 181 USPQ 779 (Comm'r 1974). See also *Tokaido v. Honda Associates Inc.*, 179 USPQ 861, 862 (TTAB 1973); *Whopper-Burger, Inc. v. Burger King Corp.*, 171 USPQ 805, 806-07 (TTAB 1971); *Martin Beverage Co. v. Colita Beverage Corp.*, 169 USPQ 568, 570 (TTAB 1971).

Registrant therefore respectfully requests that this matter be suspend pending the outcome of Civil Action No. 1:19-CV-00094-EJF.

DATED: November 20, 2019

Respectfully submitted,

/s/ Brian Gaynor

By: Brian M. Gaynor, Esq.

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Attorneys for Registrant,

Sinomax USA Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing was forwarded by email on this 20th day of November, 2019 to the attorneys for the Petitioner at the following address:

Preston P. Frischknecht
Project CIP
preston@projectcip.com

/s/ Brian Gaynor _____
Brian M. Gaynor, Esq.

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