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

Proceeding	92067341
Party	Plaintiff Watching Time, LLC
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Submission	Other Motions/Papers
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Date	06/20/2019
Attachments	Cancellation No 92067341 - Motion to Resume and Renew.pdf(928084 bytes )

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

-----X  
Watching Time, LLC.,

Petitioner, **Cancellation No. 92067341**  
-against-

International Watchman, Inc.

Registrant.  
-----X

**PETITIONER’S MOTION TO RESUME PROCEEDINGS AND RENEW  
PETITIONER’S MOTIONS TO STRIKE AND COMPEL**

Pursuant to the Trademark Trial and Appeal Board’s (“Board”) September 24, 2018 Order (27 TTABVUE 3-4) and TBMP § 510.02(b), Petitioner Watching Time, LLC. (“Petitioner”) respectfully moves the Board for an order resuming the subject proceeding (Cancellation No. 92067341) and renewing Petitioner’s motions to strike affirmative defenses and compel discovery. Such an order is appropriate because the civil action that formed the basis of suspension of this proceeding has been fully disposed of in favor of Petitioner and Petitioner’s outstanding motions were not resolved or made moot by the civil action.

Petitioner incorporates herein its Brief in Support, which is filed contemporaneously herewith.

WHEREFORE, for the reasons stated above and in the accompanying Brief in Support, Petitioner requests that the Board grant its Motion to Resume Proceedings; the Board grant its Motion to Renew Petitioner’s Motions to Strike Affirmative Defenses and Compel Discovery; that the Board order Registrant to respond to Petitioner’s Motions to Strike Affirmative Defenses and Compel Discovery within seven days of said order; that the Board not to permit Registrant to

further stay this proceeding in any capacity; that the Board refer John D. Gugliotta and David A. Welling's conduct to the Director of Enrollment and Discipline for appropriate action; that the Board reset the deadlines for discovery and trial; and that the Board grant Petitioner all other relief to which it is entitled or which the Board deems proper.

Respectfully submitted,

Dated: June 20, 2019

/s/ John P. Heim III  
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Attorney for Petitioner

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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**BRIEF IN SUPPORT OF PETITIONER’S MOTION TO RESUME AND RENEW**

**I. BACKGROUND**

On November 18, 2017, Petitioner initiated this cancellation proceeding by filing a Petition to Cancel against Registrant. 1 TTABVUE. Petitioner is seeking to cancel Registrant’s mark on the grounds of genericness (1 TTABVUE 2-3), false suggestion of a connection (1 TTABVUE 3-6) and fraud (1 TTABVUE 6-7).

On December 30, 2017, Registrant filed its Answer to the Petition to Cancel, which contained numerous affirmative defenses. 4 TTABVUE. On February 9, 2018, Petitioner filed its Motion to Strike the Affirmative Defenses from Registrant’s Answer. 7 TTABVUE. On February 15, 2018, the Board suspended the proceedings pending disposition of Petitioner’s Motion to Strike. 8 TTABVUE. On February 26, 2018, Registrant filed its Motion to Amend its Answer to the Petition to Cancel, amending numerous affirmative defenses. 9-10 TTABVUE. On June 30, 2018, the Board issued an order striking numerous affirmative defenses in Registrant’s Amended Answer and resuming the proceedings. 15 TTABVUE.

On July 20, 2018, Registrant filed its Second Amended Answer to the Petition to Cancel, amending multiple affirmative defenses while striking others. 16 TTABVUE. On August 17, 2018, Petitioner filed its Motion to Strike the Affirmative Defenses from Registrant’s Second Amended Answer. 20 TTABVUE.

On July 20, 2018, Registrant filed its Motion to Suspend the subject proceeding pending a civil action between the parties in the United States District Court for the Northern District of Ohio Case No 1:18 CV 1690 (the “Federal Case”). 18 TTABVUE. September 24, 2018, the TTAB suspended the proceedings pending the outcome of the Federal Case. 27 TTABVUE.

## **II. MOTION TO RESUME**

### **A. The Subject Proceeding Should be Resumed**

Petitioner’s Motion is governed by TBMP § 510.02(b), which states:

“When a proceeding before the Board has been suspended pending the outcome of another proceeding, and that other proceeding has been finally determined, the interested party should promptly notify the Board in writing of the disposition of the other proceeding, and request that further appropriate action be taken in the Board proceeding ... A copy of the decision in the other proceeding should accompany the notification ... A proceeding is considered to have been finally determined when an order or ruling that ends litigation has been rendered, and no appeal has been filed, or all appeals filed have been decided and the time for any further review has expired.”

The Federal Case was dismissed<sup>1</sup> in favor of Petitioner by judgement of the District Court entered on April 29, 2019 and the time period for filing a Notice of Appeal expired on May 29, 2019. Heim Decl. at ¶¶ 2-3. Accordingly, the Federal Case has been fully and finally determined with no appeal filed. Resumption of the present cancellation proceeding is therefore proper.

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<sup>1</sup> The Federal Action was dismissed as to all other parties on April 16, 2019 by stipulation. Heim Decl. at ¶ 4.

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