

ESTTA Tracking number: **ESTTA1089445**

Filing date: **10/19/2020**

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

Proceeding No.	92074009
Filing Party	Defendant Franklin Square Holdings, L.P.
Other Party	Plaintiff Growmark, Inc.
Pending Motion	There is no motion currently pending and no other motion is being filed concurrent with this consent motion.
Attachments	FSCP_consent_to_suspend_Proceeding.pdf(285667 bytes)

Consent Motion for Suspension in View of Civil Proceeding

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, Franklin Square Holdings, L.P. hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Franklin Square Holdings, L.P. has secured the express consent of all other parties to this proceeding for the suspension requested herein.

Certificate of Service

The undersigned hereby certifies that a copy of this filing has been served upon all parties, at their address of record by Email on this date.

Respectfully submitted,


/Camille M. Miller/

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10/19/2020

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


GROWMARK, INC.	:	Proceeding Nos.: 92074009 (Parent Case), 92074010 (Consolidated – Child), 92074011 (Consolidated – Child)
	:	
Petitioner,	:	Serial Nos.: 86373395, 86956918, 88307681
	:	
v.	:	Marks: FS INVESTMENTS, FS INVESTMENT SOLUTIONS, FS
	:	
FRANKLIN SQUARE HOLDINGS, L.P.	:	INVESTMENTS and Design 
	:	
Registrant.	:	
	:	
	:	
	:	

**MOTION ON CONSENT TO SUSPEND PROCEEDINGS PENDING
DISPOSITION OF RELATED FEDERAL LAWSUIT**

Registrant, Franklin Square Holdings, L.P. (“Franklin Square” or “Registrant”), pursuant to 37 C.F.R. §2.117, by and through its undersigned counsel, hereby moves, with Petitioner’s consent, to suspend the above-referenced Cancellation Proceedings (the “Proceedings”) pending the disposition of a pending Federal lawsuit concerning the same marks and involving the same parties. The federal lawsuit is currently being litigated in the United States District Court, Eastern District of Pennsylvania, under the caption *Franklin Square Holdings, L.P.. v. Growmark, Inc.* (Case No. 2:20-cv-04987-JDW), before the Honorable Joshua D. Wolson, U.S. District Judge for the Eastern District of Pennsylvania (the “Federal Action”).

Counsel for Petitioner, Jamie Nafziger, has consented to this Motion in an email to counsel for Registrant, Cozen O’Connor, on October 16, 2020.

In the Federal Action filed on October 8, 2020, Franklin Square seeks a finding, among other things, that Franklin Square's FS INVESTMENTS, FS INVESTMENT SOLUTIONS, and

FS INVESTMENTS and Design  registrations (Franklin Square's FS Marks") are not likely to cause confusion with Petitioner's FS, FS AGRI-FINANCE, and FS and Design



registrations and applications ("Petitioner's FS Marks"). A true and correct copy of Franklin Square's Federal Complaint ("Complaint") filed against Petitioner is attached hereto and marked as **Exhibit A**. Franklin Square believes that the Federal Action will have a substantial bearing, if not dispositive impact, on these Proceedings. The proceedings in the Federal Action are underway.

The parties will suffer no prejudice if this matter is stayed. These Cancellation Proceedings were only recently resumed and were just consolidated earlier this month. No discovery has yet to be issued or sought in these Proceedings.

Franklin Square expects the relief sought in the Federal Action to be granted. A finding of noninfringement by Franklin Square in the Federal Action will establish and result in findings, as set forth in the Franklin Square's Complaint, that Franklin Square's FS Marks are not infringing Petitioner's FS Marks. A finding of noninfringement by Franklin Square and Franklin Square's FS Marks will directly address and contradict Petitioner's claims in its Petition for Cancellation by showing Franklin Square's FS Marks are not confusingly similar to Petitioner's FS Marks within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d). As a result, if Franklin Square is successful, the Federal Action should render and establish that Franklin Square's FS Marks should not be cancelled and should remain registered.

In accordance with Rule 510.02(a) of the Trademark Trial and Appeal Board rules, the suspension of these Proceedings is proper. *See* 37 CFR § 2.117(a); *Other Telephone Co. v. Connecticut National Telephone Co.*, 181 USPQ 125 (TTAB 1974), *petition denied*, 181 UPSQ 779 (Comm'r 1974); *Tokaido v. Honda Associates Inc.*, 179 USPQ 861 (TTAB 1973); *Whopper-Burger, Inc. v. Burger King Corp.*, 171 USPQ 805 (TTAB 1971).

WHEREFORE, good cause having been shown, Franklin Square, with Petitioner's consent, requests that the above-captioned Proceedings be suspended.

Dated: October 19, 2020

Respectfully submitted by:

/s/ Camille M. Miller

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*Attorneys for Registrant,
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CERTIFICATE OF SERVICE

It is hereby certified that on this 19th day of October, 2020, a true and correct copy of the foregoing Motion to Suspend Petition for Cancellation was sent to counsel for Petitioner at the address set forth below, via email.

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/s/ Camille M. Miller
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