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

Proceeding no.	92080026
Party	Defendant Rapha Pharmaceuticals, Inc.
Correspondence address	RAPHA PHARMACEUTICALS INC 7208 W SAND LAKE RD SUITE 305 ORLANDO, FL 32819 UNITED STATES Primary email: info@raphapharma.com 407-362-7638
Submission	Motion to Suspend for Civil Action
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Date	08/10/2022
Attachments	Motion to Suspend v1.pdf(163090 bytes) Case 62022cv01084.pdf(3533109 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

The Trademark Trial and Appeal Board

Serial No. 86888489

For the mark MORNING AFTER LEVONORGESTREL TABLET

Auro Health LLC,

Petitioner,

vs.

Rapha Pharmaceuticals, Inc.,

Respondent.

Cancellation No. 92080026

Registration No. 5263398

RESPONDENT'S MOTION TO SUSPEND PROCEEDINGS PURSUANT TO 37 C.F.R. § 2.117(a)

INTRODUCTION

Rapha Pharmaceuticals, Inc. (“Respondent”) hereby moves to suspend proceedings related to this Petition for Cancellation, pursuant to 37 C.F.R. § 2.117(a), pending determination of a case in United States District Court for the Middle District of Florida entitled Auro Health LLC v. Rapha Pharmaceuticals, Inc., case 6:2022cv01084 (“Federal Court Action”).

As explained in more detail below, the Petition for Cancellation involves the same basic trademark issues relating to the Respondent’s registration of the mark MORNING AFTER LEVONORGESTREL TABLET (“Trademark”) as shown in Registration No. 5,263,398 as were raised in the Federal Court Action.

As will be shown, the issues raised in the Federal Court Action regarding Respondent’s Trademark may have a bearing on this proceeding and therefore warrant suspension of this proceeding pursuant to 37 C.F.R. § 2.117(a).

NATURE OF THE PROCEEDING

Petitioner Auro Health, LLC (“Petitioner”) has petitioned to cancel Respondent’s registration of Respondent’s Trademark in a bad faith attempt by Petitioner to be absolved of its contractual and fiduciary duties to protect Respondent’s Trademark, as Respondent's contract manufacturer, for goods manufactured by Petitioner for Respondent.

STATEMENT OF FACTS

Petitioner acknowledged Respondent's registered Trademark in a contract manufacturing agreement entered into by and between Petitioner and Respondent on March 22, 2018 without making any objections thereto. Petitioner filed the Federal Court Action against Respondent on June 22, 2022 with the exact same Trademark issues raised in Petitioner’s Petition for Cancellation filed with the TTAB on June 28, 2022 and yet failed, in bad faith, to notify the board immediately.

LEGAL GROUNDS FOR MOTION TO SUSPEND UNDER 37 CFR 2.117(A)

A motion to suspend is governed by 37 CFR § 2.117(a) which provides:

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a Federal Court Action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the Federal Court Action or the other Board proceeding.

See also TBMP § 510.02(a).

In the absence of unusual circumstances, the Board will suspend a proceeding if the final determination of the other proceeding may have a bearing on the issues before the Board. There is

no requirement the determination will likely be dispositive of the Board proceeding but only that it may have a bearing on the proceeding. See TBMP § 510.02(a) citing, in part, *New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 USPQ2d 1550, 1552 (TTAB 2011).

ARGUMENT

THIS PROCEEDING SHOULD BE SUSPENDED BECAUSE THE DECISION IN THE FEDERAL COURT ACTION MAY HAVE A BEARING ON THIS PROCEEDING

The Decision in the Federal Court Action may have a bearing on this proceeding. The final adjudication of the Federal Court Action clearly may have a bearing on this proceeding in that it may have an impact on the ownership of the mark, the scope of protection, and strength of the mark, the claims and defenses available to the parties, the evidence to be submitted and other factors to be considered by the Board. The ultimate determination of the matter could also provide evidence to support additional grounds for Cancellation just as it could also preclude certain additional grounds for Cancellation.

In addition, the granting of this motion could avoid premature and unnecessary discovery regarding currently unresolved issues about the Respondent's Mark that may be resolved in the Federal Court Action.

As noted, the relevant allegations in Petition for Cancellation are essentially identical to those in the Federal Court Action and may have a bearing upon this Petition and warrants suspension of this proceeding.

CONCLUSION

For all the reasons set forth above, Respondent respectfully submits the Federal Court Action may have a bearing on this proceeding and therefore should be suspended until final determination of the civil action pursuant to 37 C.F.R. § 2.117(a).

Dated: August 10, 2022

Respectfully submitted,

/ Hector Molina /
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