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

Proceeding no.	92084729
Party	Defendant Fire Lyfe LLC
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Date	07/20/2024
Attachments	FIRE LYFE REPLY to OPPOSITION to MOTION to SUSPEND v2.pdf(174100 bytes) EXHIBIT A to Rply Mn2Suspend Cigarette Market.pdf(737221 bytes) EXHIBIT B 2Rply Mn2Suspend Jiang and Firelyfe Booths.pdf(504827 bytes) Exhibit C 2Rply Mn2Suspend Consumer Confusion.pdf(504931 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

OSF IP LLC	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No.: 92084729
	)	
FIRE LYFE INC.	)	
	)	
Respondent.	)	

RESPONDENT'S REPLY TO PETITIONER'S OPPOSITION TO MOTION TO SUSPEND PROCEEDINGS

Respondent FIRE LYFE INC submits this Reply to Petitioner's Opposition to Respondent's Motion to Suspend Proceedings. For the reasons set forth below, Respondent respectfully requests that the Board grant the motion to suspend proceedings.

I. THE PARTIES ARE THE SAME

The Petitioner herein and the Defendants in the District Court matter are sufficiently related to warrant a suspension, the former being the alter-ego of the latter.

The recognition of an alter-ego is an equitable tool used to vindicate the rights of those damaged by the abuse of the corporate form. *Successor Agency to Former Emeryville Redevelopment Agency v. Swagelok Co.* (N.D.Cal. 2019) 364 F. Supp. 3d 1061. Generally, the alter-ego or single-enterprise doctrine, will be applied to two related corporations when: (1) there is such a unity of

interest and ownership that the separate personalities of the corporations no longer exist, or are merged, so that one corporation is a mere adjunct of the other or the two companies form a single enterprise, and (2) inequitable results will follow if the corporate separateness is respected, and the acts in question are treated as those of one corporation alone. *Tran v. Farmers Group, Inc.* (2002) 140 Cal.App.4th 1202.

Relevant to determining whether unity of interest exists in a case, such that the corporations' separate personalities are nonexistent, include factors such as identical directors and officers, commingling of assets, identical equitable ownership in the two entities, as well as where the corporations are organized and controlled, and that one corporation's affairs are so conducted as to make it merely an instrument, agent, conduit, or adjunct of the other. *Shaoxing County Huayue Import & Export v. Bhaumik* (2011) 191 Cal.App.4th 1189; *Brooklyn Navy Yard Cogeneration Partners, L.P. v. Superior Court* (1997) 60 Cal.App.4th 248; *McLaughlin v. L. Bloom Sons Co.* (1962) 206 Cal.App.2d 848.

Jiang, a defendant in a California district court case, is both the founder and CEO of his co-defendant ONLY SMOKE FIRE LLC, and founder and CEO of OSF IP LLC. The latter was formed only days after receipt by the attorney for both Jiang and ONLY SMOKE, of notice of the pending district court suit. Jiang transferred his ownership of trademark registrations to OSF IP LLC thereafter. The activities of OSF IP LLC — marketing and exploiting the FIRE mark for vapes, goods closely related to those of FIRE LYFE — are identical to the activity complained of in the District Court. Upon being served, rather than affirmatively defending that the FIRE LYFE GLOBAL registrations were null and void within the already pending matter, the instant petition

to cancel was filed. Thus, Petitioner herein is but an alter ego of Jiang and ONLY SMOKE FIRE LLC, adding expense and unnecessary complexity to an already pending matter, to harass, delay, and economically oppress.

II. THE GOODS ARE HIGHLY RELATED

The District Court matter was filed because Petitioner introduced vaping device, which are so highly related to Respondent's registered goods, *cigarette, cigars, cigarillos, hemp rolling papers, and other smoker's articles,* that not only is there a likelihood of confusion between Defendants Jiang and ONLY SMOKE FIRE devices, and FIRE LYFE GLOBAL's goods under 15 U.S.C. § 1052(d), but actual confusion has and continues to result. Articles and studies have established that a significant number of smokers transition to vaping. This migration links the two categories directly, as consumers who used to purchase cigarettes and other smoking products are now buying vaping devices and e-liquids. These studies highlight factors such as shared consumer base, similar product usage, and overlapping market dynamics that underscore the relationship between smoking and vaping products. These connections are critical in understanding how the marketing, regulation, and legal considerations for one category can impact the other. In proof thereof, *Exhibit A*, an Article about these developments in the Cigarette Market, is attached hereto and incorporated.

Petitioner and the Defendants in the District Court matter marketed FIRE and ONLY SMOKE FIRE products at the same trade show where Respondent had already marketed, and established consumers. This trade show was particularly focused on tobacco and nicotine products. Petitioner's entry into and continuation of marketing at the same trade show with the same name,

leading to consumer confusion. *Exhibit B*, attached hereto and incorporated, demonstrates the presence of both parties at the same trade show.

Respondent consistently received customer reports expressing confusion and disbelief due to Petitioner's prominent use of the FIRE mark. *Exhibit C*, demonstrating actual consumer confusion, is attached hereto and incorporated.

Registrant is entitled to have protection of its registrations extend to the natural scope of expansion. See *In re Iolo Technologies, LLC*, 2015 TTAB LEXIS 288 (TTAB 2015) (finding that tobacco and electronic cigarettes are related goods).

III. JUDICIAL ECONOMY WILL BE SERVED BY SUSPENSION

Petitioner argues that a suspension will not serve judicial economy, while the instant petition was filed during pendency of the district court case, segregating issues that could have been an decided in the same matter, into separate matters. It is Petitioner, thus, that has exacerbated and compounded the use of judicial resources through filing this petition. Further, it is Petitioner's reliance upon a fraudulently procured renewal that gave rise to the need to amend to add the fraud claim in the initiating District Court matter.

The Board's well-settled policy is to suspend when parties are involved in a civil action that could be dispositive or have bearing upon a Board case. *Holy Spirit Association for Unification of World Christianity v. World Peace and Unification Sanctuary Inc.* 2019 US Dist Lexis 122744, 2019 WL 3297469, citing *General Motors Corp. Cadillac Club Fashion* 22 USPQ2d 1933, 1937 (1992). It

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