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

LOVINS, INC., D/B/A/ FRIDAY HARBOR  
SPORTSWEAR, a Washington corporation,

Opposer,

v.

ABC INTERNATIONAL TRADERS, INC.,  
D/B/A MGA ENTERTAINMENT  
CORPORATION, a California corporation,

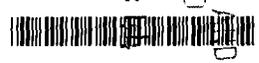
Applicant.

No. 91152252

OPPOSER'S REPLY TO  
APPLICANT'S RESPONSE TO  
OPPOSER'S MOTION TO  
SUSPEND PURSUANT TO  
C.F.R. § 2.117

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TRADEMARK TRIAL  
AND APPEAL BOARD



08-22-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #71

In reply to Applicant's Response to Opposer's Motion to Suspend Pursuant to 37 C.F.R. § 2.117, Opposer requests that the Board grant Opposer's Motion to Suspend Pursuant to 37 C.F.R. § 2.117 as the civil action recently initiated by Opposer will be dispositive of the issues pending in this proceeding.

Pursuant to 37 C.F.R. § 2.117, the Board should suspend proceedings when the parties are engaged in a civil action "which may be dispositive of the case." Opposer's rights in the mark BRATZ extend to children's and infant's clothing and juvenile products, such as toys and dolls. Opposer draws the Board's attention to the prayer for relief in the Amended Complaint filed with Opposer's Motion to Suspend Pursuant to 37 C.F.R. § 2.117, in relevant part, as follows:

[A]n Order pursuant to the authority of this Court granted by 15 U.S.C. § 1119, § 37 of the Lanham Act, instructing the Commissioner of Patents and Trademarks to cancel any registration owned by Defendants for marks comprised of or including the word BRATZ and to deny any application seeking registration of marks comprised of or including the word BRATZ for juvenile products, toys or clothing.

*Amended Complaint*, page 5, para. 4.

Applicant's application serial No. 76/299,502, for the mark THE BRATZ PACK for "dolls, and doll accessories" is encompassed in the civil action as dolls and doll accessories

1 are commonly considered "juvenile products" and/or "toys." Therefore, the issues in the civil  
2 action are dispositive of the issues in the current proceeding pending before the Board in that  
3 if Opposer prevails in the civil action, this Applicant's application serial No. 76/299,502  
4 would be denied pursuant to court order.

5 Moreover, Applicant cites in its Response to Opposer's Motion to Suspend Pursuant to  
6 37 C.F.R. § 2.117 at Exhibit 2, Opposer's Motion for Preliminary Injunction, filed in the civil  
7 action. Opposer's Motion for Preliminary Injunction states that the claims against Defendants  
8 in that case, including Applicant, focus on use of the mark BRATZ for clothing in order to  
9 preserve judicial resources and to bring the matter before the Court for earliest determination.  
10 *Motion for Preliminary Injunction*, footnote 2. The Motion for Preliminary Injunction also  
11 states that Opposer possesses the right to exclude others from using the mark BRATZ in the  
12 channel of trade for children and infants clothing, such as juvenile products, **including toys**  
13 **and dolls**. *Motion for Preliminary Injunction*, footnote 1 (emphasis added). Therefore,  
14 although the Motion for Preliminary Injunction focuses on Opposer's opposition to  
15 Defendants' sale of children and infants clothing, the claims in the Amended Complaint are  
16 subsisting and valid, and include issues that are dispositive of the present proceeding before  
17 the Board.

18 Therefore, Opposer's Motion to Suspend Pursuant to 37 C.F.R. § 2.117 should be  
19 granted.

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1 Dated this 16<sup>th</sup> day of August, 2002.

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3 CHRISTENSEN O'CONNOR  
4 JOHNSON KINDNESS<sup>PLLC</sup>

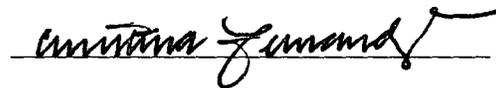
5  
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7 Cindy L. Caditz  
8 Seann W. Hallisky  
9 Attorneys for Opposer LOVINS, INC.,  
10 D/B/A/ FRIDAY HARBOR  
SPORTSWEAR,

11 **CERTIFICATE OF MAILING**

12 I hereby certify that this OPPOSER'S REPLY TO APPLICANT'S RESPONSE TO OPPOSER'S  
13 MOTION TO SUSPEND PURSUANT TO 37 C.F.R. § 2.117 in Opposition No. 91152252 is being deposited  
14 with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid addressed  
15 to: BOX TTAB NO FEE, Commissioner for Trademarks, Trademark Trial and Appeal Board, 2900 Crystal  
16 Drive, Arlington, VA 22202-3513, on AUGUST 14, 2002.

17 Date: August 14, 2002

18 

19 **CERTIFICATE OF SERVICE**

20 I hereby certify that this OPPOSER'S REPLY TO APPLICANT'S RESPONSE TO OPPOSER'S  
21 MOTION TO SUSPEND PURSUANT TO 37 C.F.R. § 2.117 in Opposition No. 91152252 is being deposited  
22 with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid addressed  
23 to:

24 Carol A. Witschel  
25 White & Case  
26 1155 Avenue of the Americas  
27 New York, NY 10003

Date: August 14, 2002



SWH:SLJ