ESTTA Tracking number: **ESTTA134282**
Filing date: **04/09/2007**

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

Proceeding	91175892
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Date	04/09/2007
Attachments	Opposition91175892--ApplicantDanielMotiontoSuspend4.9.07.pdf (4 pages)(14474 bytes)

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

MICROSOFT CORPORATION, Opposer, v. DANIEL, MARK T., Applicant.	)))))))))))	Opposition No. 91175892

APPLICANT'S MOTION FOR SUSPENSION OF PROCEEDINGS

Applicant Mark T. Daniel ("Applicant"), pursuant to 37 C.F.R. § 2.117, hereby moves to suspend the above-captioned Opposition, brought by Opposer Microsoft Corporation ("Opposer"), pending final determination of Opposer's applications nos. 78953571 and 78977970 at issue in this Opposition, which may have a bearing on this Opposition. This motion follows the November 13, 2006 Office Action notice ("Office Action") refusing registration based on the likelihood of confusion with prior registered marks, which are not at issue in this Opposition, and Opposer's April 5, 2007 filing in response to the November 13, 2006 Office Action.

Applicant has applied for federal registration of his ZuneSleeve mark (Application Serial No. 78938513, Class 9). Opposer has filed a Notice of Opposition to Applicant's mark, claiming priority based on a foreign registration.[1]

[1] Opposer Microsoft Corporation asserts "priority based on German Registration 30634103.4, filed May 29, 2006 and [purportedly] registered July 11, 2006…." *See* Opposer's Notice of Opposition ¶ 7. To date, it appears that

The Office Action outlined reasons for refusing registration of Opposer's application nos. 78953571 and 78977970. According to the Office Action, one reason for refusing registration is that Opposer's mark "is similar in appearance and sound to registered marks ['ZOON,' 2488685 and 'ZOON' and design, 2143470, respectively,]" finding that Opposer's mark "share[s] the common term Z and N and similar sounding," concluding that Opposer's mark and the registered marks "are essentially phonetic equivalents." Thus, according to the Office Action, Opposer's mark "so resembles the [Zoon mark] as to be likely to cause confusion, or to cause mistake, or to deceive."

Before resolution of the issues identified in the Office Action, Opposer filed this Opposition. For the reasons discussed below, this Opposition should be suspended pending resolution of those issues.

Suspension of these proceedings is warranted pursuant to 37 C.F.R. § 2.117(a)[2] and (c)[3] because there are other issues concerning Opposer's applications that strike at their registrability that may be dispositive of the issues in this Opposition. Moreover, the disposition of the other issues may terminate this Opposition in its entirety, rendering moot Opposer's Opposition. Thus, Applicant makes this request in the interests of justice and judicial economy, as well as in the interests of the parties, and not for the purposes of undue delay. Furthermore, suspension will maintain the status quo; therefore, Opposer will not be prejudiced by a suspension of this proceeding. Accordingly, Applicant requests suspension of this Opposition.

Opposer has not filed with the U.S. Patent and Trademark Office a copy of the foreign registration, as noted in the Office Action.

[2] Section 2.117(a) states in pertinent part that

> 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 civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.

[3] Section 2.117(c) states: "Proceedings may also be suspended, for good cause, upon motion or a stipulation of the parties approved by the Board."

Applicant requests Suspension, and, if necessary, re-setting of the discovery and testimony periods at the conclusion of the suspension period. Applicant will notify the Board in the event of any changes that may affect the status quo. Therefore, for the reasons discussed above, Applicant respectfully requests suspension of these proceedings, pending final determination of Opposer's applications nos. 78953571 and 78977970, including the determination of the issues outlined in the November 13, 2006 Office Action.

Respectfully submitted,

By: /s/ Mark Tyson Daniel
Mark Tyson Daniel
Applicant, *pro se*

Date: April 9, 2007

CERTIFICATE OF SERVICE

I, Mark Tyson Daniel, hereby certify that on this 9th day of April 2007, I caused a true and correct copy of Applicant's Motion for Suspension of Proceedings to be served via first class U.S. Mail on counsel for Opposer Microsoft Corporation at the address below:

William O. Ferron, Jr.
Seed IP Law Group
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/s/ Mark Tyson Daniel__
Mark Tyson Daniel