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Filing date: **06/25/2010**

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

|                        |   |
|------------------------|---|
| Proceeding             | 91176920  |
| Party                  | Plaintiff<br>Durance  |
| Correspondence Address | Cathy E. Shore-Sirotin<br>Lackebach Siegel LLP<br>One Chase RoadLackebach Siegel Building<br>Scarsdale, NY 10583<br>UNITED STATES<br>cshore@LSLLP.com, nsaraco@LSLLP.com, tmefs@LSLLP.com |
| Submission             | Motion to Suspend for Settlement Discussions  |
| Filer's Name           | Cathy E. Shore-Sirotin  |
| Filer's e-mail         | cshore@LSLLP.com, nsaraco@LSLLP.com, tmefs@LSLLP.com  |
| Signature              | /cathy e. shore-sirotin/  |
| Date                   | 06/25/2010  |
| Attachments            | Motion to Suspend Proceedings 91176920.pdf ( 4 pages )(546131 bytes )   |

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

**Application Serial No.:** 78/842,488  
**Mark:** SKINDURANCE  
**International Class:** 3  
**Applicant:** Apex Energetics  
**Published:** October 31, 2006

|                         |   |                                  |
|-------------------------|---|----------------------------------|
| -----                   | X |                                  |
| <b>DURANCE,</b>         | : |                                  |
|                         | : |                                  |
| <b>Opposer,</b>         | : |                                  |
|                         | : |                                  |
| <b>v.</b>               | : | <b>Opposition No. 91/176,920</b> |
|                         | : |                                  |
| <b>APEX ENERGETICS,</b> | : |                                  |
|                         | : |                                  |
| <b>Applicant.</b>       | : |                                  |
| -----                   | X |                                  |

**CONSENTED MOTION TO SUSPEND THE PROCEEDINGS**

Opposer Durance, a Société à Responsabilité Limitée organized and existing under the laws of France, hereby moves for good cause again **to suspend these proceedings through September 25, 2010, a period of 90 days from the date the current suspension ends**, pursuant to 37 C.F.R. §2.117(c), with the consent of Applicant.<sup>1</sup> This date was selected to coincide with the similar request made in the related opposition proceeding, Opposition No. 91/172,506, involving the mark SUNDURANCE.<sup>2</sup>

The parties have previously requested several suspensions of the discovery and testimony periods, all of which were granted. During this time, the parties have been diligently negotiating to resolve this matter. The current suspension is due to expire on June 27, 2010, and thus absent further suspension, proceedings will resume on June 28, 2010.

<sup>1</sup> Applicant's consent was provided by email from its counsel to Opposer's counsel on June 24, 2010.  
<sup>2</sup> The mark SUNDURANCE, Ser. No. 78/596,933, is owned by an entity related to Applicant/Defendant herein and is represented by the same counsel, Mr. Scott Tips. Opposer/Plaintiff in both proceedings is the same entity.

In its order dated July 6, 2009, the Board stated that if the parties requested another extension or suspension, they must include a progress report detailing their settlement negotiations.

Good cause for further suspension is shown as follows. Since the last suspension request, the parties have continued to exchange drafts of a settlement agreement for SKINDURANCE, and the issue then outstanding has been resolved. However, another new issue (which is confidential) has arisen, and this has unexpectedly caused a delay in the amicable resolution of both matters. It is believed that the parties are close to resolving this new issue.

Given the very high prospects for settlement and the fact that such settlement will result in the voluntary dismissal of this Opposition Proceeding, as well as the related proceeding, the parties believe it would be a waste of both time and money to proceed with discovery at this time. However, absent further suspension, the parties will need to commence discovery, upon the expiration of the current suspension.

Regarding a firm timetable for resolution, the parties anticipate that all outstanding issues will be resolved in less than 90 days, but request additional time so that: (1) the agreed upon terms can be incorporated into the written settlement agreement; (2) the agreement can be translated into French, if necessary; (3) the agreement can be executed by all three parties, two of which reside in the United States and one of which resides in France; and (4) no further suspension or extension need be requested. Thus, despite several prior suspensions, this request is made for good cause to allow the parties to finalize their amicable resolution of this matter, and not for an improper purpose, such as delay.

A request for a 90 day suspension is also being filed today in the SUNDURANCE case. The SUNDURANCE case also is currently suspended through June 27, 2010, with proceedings to resume June 28, 2010.

Opposer respectfully requests that the same schedule be adopted in this case, for the convenience of the parties. In the very unlikely event that this matter is not amicably resolved, it would be helpful if the two opposition proceedings remained on the same discovery and testimony schedule.

In such event, the following revised schedule is requested:

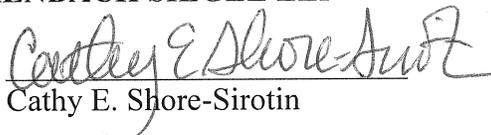
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|--|--------------------|
| Proceedings to resume:   | September 26, 2010 |
| Discovery period to close:   | December 25, 2010  |
| 30-day testimony period for party in position of plaintiff to close: | March 25, 2011     |
| 30-day testimony period for party in position of defendant to close: | May 24, 2011       |
| 15-day rebuttal testimony period to close:                           | July 8, 2011       |

For the reasons set forth above, Opposer respectfully submits that good cause for this request has been demonstrated, and that the discovery and testimony periods be **suspended through September 25, 2010**, as requested.

Dated: June 25, 2010

Respectfully submitted,

**LACKENBACH SIEGEL LLP**

By:   
Cathy E. Shore-Sirotn

Lackenbach Siegel Building  
One Chase Road  
Scarsdale, New York 10583  
(914) 723-4300 phone; (914) 723-4301 fax  
[cshore@LSLLP.com](mailto:cshore@LSLLP.com)

**Attorneys for Opposer**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the enclosed Opposer's Consented Motion to Suspend the Proceedings was served on Applicant, this day, by U.S. Mail and electronic mail, addressed to Counsel for Applicant, as follows:

Scott C. Tips, Esq.  
Tips & Associates  
180 Montgomery Street, Suite 2200  
San Francisco, CA 94104  
scott@rivieramail.com; scott@monaco.mc

Dated: Scarsdale, New York  
June 25, 2010



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Nicole Saraco