

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: January 21, 2014

Opposition No. **91198552**

Raising Cane's USA, L.L.C.

v.

Fifty-Six Hope Road Music
Limited

Cancellation No. **92053461**

Fifty-Six Hope Road Music
Limited

v.

Raising Cane's USA, L.L.C.

Andrew P. Baxley, Interlocutory Attorney:

This case now comes up for consideration of Fifty-Six Hope Road Music Limited's ("Fifty-Six") motion (filed December 9, 2013) to suspend proceedings herein pending final determination of a civil action styled *Fifty-Six Hope Road Music Limited v. Raising Cane's USA, L.L.C.*, Case No. 1:13-cv-13110-RGS, filed in the United States District Court for the District of Massachusetts. The motion has been fully briefed.

The Board's general practice is to suspend proceedings before it when any party to a pending Board proceeding is involved in a civil action which may have a bearing on the

Board case. See Trademark Rule 2.117(a). Although the USPTO has expertise in determining trademark registrability, such determinations are is not within the USPTO's exclusive jurisdiction. See *American Bakeries Co. v. Pan-O-Gold Baking Co.*, 2 USPQ2d 1208 (D.C. Minn. 1986). To the extent that a civil action in a Federal district court involves issues in common with those in a Board proceeding, the district court's findings are binding on the Board, whereas the Board's findings are merely advisory to the district court. See *id.*; TBMP Section 510.02(a). Moreover, the Board is empowered only to determine registrability of marks and has no injunctive authority. See TBMP Section 102.01 (Board cannot determine right to use a mark).

Notwithstanding that these consolidated proceedings has been pending for three years, the Board finds that suspension of these consolidated proceedings pending final determination of Case No. 1:13-cv-13110-RGS is warranted. In that case, Fifty-Six has alleged that Raising Cane's USA, LLC's ("Raising") marks, including Raising's involved ONE LOVE mark, infringe Fifty-Six's marks, including Fifty-Six's involved ONE LOVE mark, and seeks cancellation of Raising's involved registrations, including involved Registration No. 3033511. The district court's findings in the civil action may have a bearing upon these consolidated proceedings. Moreover, such findings would be binding upon the Board.

Accordingly, Fifty-Six's motion to suspend is hereby granted. Proceedings herein are suspended pending final determination, including any appeals or remands, of Case No. 1:13-cv-13110-RGS.

Within twenty days after the final determination thereof, Fifty-Six should notify the Board so that this case may be called up for appropriate action. The Board will make annual inquiry as to the status of Case No. 1:13-cv-13110-RGS. While this case is suspended, the parties should keep their correspondence addresses current.