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

| | |
|---|---|
| Proceeding | 91202802 |
| Party | Plaintiff<br>R2Sonic, LLC |
| Correspondence Address | JANE SHAY WALD<br>IRELL & MANELLA LLP<br>1800 AVENUE OF THE STARS , SUITE 900<br>LOS ANGELES, CA 90067<br>UNITED STATES<br>jwald@irell.com, mcohen@irell.com, trademarks@irell.com, tmfiler@irell.com |
| Submission | Other Motions/Papers |
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| Signature | /Jane Shay Wald/ |
| Date | 05/04/2012 |
| Attachments | R2Sonic Reply (3).pdf ( 3 pages )(15190 bytes ) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application of:

Opposition No. 91202802

Serial No: 79099219

Mark: Design of a Sound Wave

**OPPOSER'S REPLY TO APPLICANT'S BRIEF IN OPPOSITION TO OPPOSER'S MOTION FOR SUSPENSION**

Opposer respectfully requests leave to submit this short Reply in response to Applicant's opposition brief.[1]

It seems disingenuous for Applicant to argue at this early stage in the civil action that its unitary mark of a wave logo, coupled with the RESON word element, will be absent from a judicial examination of the respective parties' marks in commerce. We presume Applicant is not suggesting that the jury is precluded from viewing its mark as a whole because the opposed element forms but a part of its mark, while the element on which it accuses Opposer forms the other part.

Opposer wishes to re-emphasize a basic point that Applicant misses. Rule 2.117(a) does not require, as a condition precedent to a suspension, that the civil action involve the identical mark as that in the Opposition. Although that may be a common fact pattern, it is not a condition of suspension. *New Orleans Louisiana Saints LLC and NFL Properties v. Who Dat?, Inc*. 99 U.S.P.Q. 2d 1550 (T.T.A.B. 2011) does not hold otherwise. Applicant cannot manufacture a generalized rule based on the particular facts of that case. In fact, that

[1] Applicant's opposition brief was apparently served by mail (only) on April 30, 2012, which mailing has not yet arrived. Opposer found the response on line at the PTO web site, noting the proof of service by mail.

case relies upon 6 *McCarthy on Trademarks and Unfair Competition* Sec. 32:47 (4th ed. updated June 2011), citing: "('It is standard procedure for the Trademark Trial and Appeal Board to stay administrative proceedings pending the outcome of court litigation between the same parties involving related issues.')"

For these reasons, and those set forth in its Motion of April 11, 2012, Opposer respectfully requests suspension.

Dated: May 4, 2012

Respectfully submitted,

IRELL & MANELLA LLP

By: /s/ Jane Shay Wald

Jane Shay Wald
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## PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1800 Avenue of the Stars, Suite 900, Los Angeles, California 90067-4276.

On May 4, 2012, I served the foregoing document described as: OPPOSER'S R2SONIC, LLC'S MOTION FOR STAY OF OPPOSITION PENDING THE DISPOSITION OF CIVIL LITIGATION on each interested party, as follows:

Richard Lehv, Esq.
Ross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017
Telephone: 212-813-5900

**E-mail: rlehv@fzlz.com**

*Attorneys for Applicant*

☒ (BY MAIL) I placed a true copy of the foregoing document in a sealed envelope addressed to each interested party, as set forth above. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Irell & Manella LLP, Los Angeles, California. I am readily familiar with Irell & Manella LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

☒ (BY ELECTRONIC MAIL) I caused the foregoing document to be served electronically by electronically mailing a true and correct copy through Irell & Manella LLP's electronic mail system to the e-mail address(es), as set forth above, and the transmission was reported as complete and no error was reported.

Executed on May 4, 2012, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

| Mary Cohen (mcohen@irell.com) | */s/Mary Cohen* |
|---|---|
| (Type or print name) | (Signature) |