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

Proceeding	91204861
Party	Defendant Jean Pierre Biane
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Submission	Other Motions/Papers
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Date	04/15/2014
Attachments	Applicant's Motion to Suspend Pending Motion for Partial Judgment on the Pleadings.pdf(70146 bytes)

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

RED BULL GMBH,)	
)	
Opposer,)	Opposition No.: 91-204,861
)	Serial No. 79/108,168
v.)	Mark: ANDALE! ENERGY DRINK
)	(& Design)
)	
JEAN PIERRE BIANE, and)	Opposition No.: 91-210,860
ANDALE ENERGY DRINK CO., LLC)	Serial Nos. 85/646,316, 85/646,359
)	Marks:
)	ANDALE! & Design (Ser. No. 85/646,316)
Applicants.)	ANDALE! & Design (Ser. No. 85/646,359)
)	

APPLICANT'S MOTION TO SUSPEND PENDING MOTION FOR PARTIAL

JUDGMENT ON THE PLEADINGS

Applicant, Andale Energy Drink Co., LLC ("Applicant"), hereby moves the Trademark Trial and Appeal Board for an order to suspend all dates in these proceedings while the Motion for Partial Judgment on the Pleadings filed April 15, 2014 is pending. Further, the Board should not consider any paper filed by Opposer which is not germane to Applicant's Motion for Partial Judgment on the Pleadings. "When any party files . . . a motion for judgment on the pleadings . . . the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion and no party should file any paper which is not germane to the motion except as otherwise specified in the Board's suspension order. If the case is not disposed of as a result of the motion, proceedings will be resumed pursuant to an order of the Board when the motion is decided." 37 CFR § 2.127(d).

In addition, "since the parties are presumed to know that the filing of a potentially dispositive motion will result in a suspension order, the filing of such a motion generally will

provide parties with good cause to cease or defer activities unrelated to the briefing of such motion" such as conducting discovery. Leeds Technologies Limited v. Topaz Communications Ltd., 65 USPQ2d 1303, 1305-06 (TTAB 2002)(time for opposer to serve discovery responses reset following decision on opposer's motion for judgment on pleadings).

Applicant has filed a Motion for Partial Judgment on the Pleadings, which is potentially dispositive of this proceeding—at least with respect to Ser. No. 85/646359. In addition, Opposer served discovery requests on Applicant on March 21, 2014, seeking information and documents regarding Ser. No. 85/646,359. Because the Motion for Partial Judgment on the Pleadings is potentially dispositive of this proceeding at least with respect to Ser. No. 85/646,359 (and, if granted, would obviate the need for Applicant to undertake the time and expense to respond to discovery), the motion provides Applicant with good cause to excuse it from responding to discovery until after the Board's decision on the motion. See Leeds, 65 USPQ2d at 1305-06 (TTAB 2002). Accordingly, the Board should suspend the proceeding and should not consider any paper filed by Opposer which is not germane to the motion. See 37 CFR § 2.127(d).

Date: April 15, 2014

Respectfully submitted,

/Paulo A. de Almeida/
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Attorneys for Applicants,
Andale Energy Drink Co. LLC, and
Jean Pierre Biane

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **MOTION TO SUSPEND PENDING MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS** has been served on Martin R. Greenstein, counsel for Opposer, on April 15, 2014, via First Class U.S. Mail, postage prepaid to:

Martin R. Greenstein
TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 95124-5273

By: /Paulo A. de Almeida/
Paulo A. de Almeida