

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

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Mailed: July 26, 2013

Opposition No. 91210245

Life Forever Changed, LLC,
KieAnn Brownell and Lisa
Couch

v.

Lynne Waggoner-Patton

Elizabeth A. Dunn, Attorney (571-272-4267):

This case comes up on opposers' motion, filed June 20, 2013, to suspend proceedings pending the disposition of the civil action between the parties. The motion has been fully briefed.

In this proceeding opposers filed a consolidated notice of opposition against applicant's three applications including the term SILHOUETTES for its "entertainment services in the nature of children's shadow dance performances." Opposers plead common law rights to the mark THE SILHOUETTES for the identical services and claims of priority of use and likelihood of confusion, that applicant is not the owner of the mark, and fraud. Applicant filed an

answer denying the salient allegations of the consolidated notice of opposition.

Applicant contests suspension on the grounds that the civil action has been pending since June 21, 2012; that discovery has been completed in the civil action but no trial is imminent; that the parties could agree to use discovery in the civil action to reduce discovery and save time in this proceeding; that applicant's business is being injured by opposers' use; and that this proceeding should go forward.

If the parties to an opposition are involved in a district court action involving the same mark, the Board will scrutinize the pleadings in the civil action to determine if the issues before the court may have a bearing on the Board's decision in the opposition. *Forest Laboratories Inc. v. G.D. Searle & Co.*, 52 USPQ2d 1058, 1061 (TTAB 1999). A decision by the district court may be binding on the Board whereas a determination by the Board as to a defendant's right to obtain or retain a registration would not be binding or res judicata in respect to the proceeding pending before the court. *New Orleans Louisiana Saints LLC and NFL Properties LLC v. Who Dat?, Inc.*, 99 USPQ2d 1550, 1552 (TTAB 2011). Thus, the civil action does not have to be dispositive of the Board

proceeding to warrant suspension, it need only have a bearing on the issues before the Board. Trademark Rule 2.117(a).

In the action pending in the United States District Court for the District of Colorado (*KieAnn Brownell and Lisa Couch, individually and derivatively on behalf of Life Forever Changed, LLC v. Lynne Waggoner-Patton and Rocky Mountain School of Dance*, Case No. 12-cv-01789-PAB), the complaint alleges trademark infringement of the Silhouettes marks, and seeks to enjoin applicant's use of the Silhouettes marks. Inasmuch as the decision by the district court will be binding in this proceeding, the Board finds good cause to grant opposers' motion. Accordingly, proceedings are suspended pending final disposition of the civil action between the parties.

Within twenty days after the final determination of the civil action, the parties shall so notify the Board and call this case up for any appropriate action. During the suspension period, the parties shall notify the Board of any address changes for the parties or their attorneys.