

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: September 28, 2015

Opposition No. 91220386

Dr. Linda S. Restrepo

v.

Alliance Riggers & Constructors, Ltd.

Jennifer Krisp, Interlocutory Attorney:

In the May 8, 2015 order, the Board deferred allowing Opposer time to file a second amended notice of opposition until such time as the Board has the record before it upon which to ascertain whether suspension of this opposition proceeding pursuant to Trademark Rule 2.117(a) is appropriate. To that end, the Board allowed the parties time in which to inform the Board of the particulars of any prior or current pending civil action(s) involving either party, or involving Applicant's opposed mark or Opposer's pleaded mark. On June 5, 2015 and June 7, 2015, respectively, Applicant and Opposer filed separate lengthy responses to the Board.¹

¹ The Board gives no consideration to Opposer's May 28, 2015 filing, captioned "Opposer's Rule 12B(6) Motion to Dismiss Applicant's Trademark Application and Brief in Support Thereof," wherein Opposer requests that the Board dismiss Applicant's application "under the mandates of Fed. R. Civ. P. 12(b)(3)" (motion, p. 4). Neither the Federal Rules of Civil Procedure nor the Trademark Rules of Procedure allow for the filing of a "motion to dismiss" an opposed trademark application for failure to state a claim upon which relief can be granted, nor is an applicant required to prove "standing." Opposer's motion is

To be clear, the issue before the Board is the propriety of suspending this proceeding pending final disposition of the civil action in which the parties are involved.

Suspension

It is the policy of the Board to suspend proceedings when the parties are involved in a civil action, which may be dispositive of or may have a bearing on the Board case. See Trademark Rule 2.117(a). The Board may, in its discretion, suspend an opposition proceeding pending, *inter alia*, the final determination of an action between the parties in a state court. See *Mother's Restaurant Inc. v. Mama's Pizza, Inc.*, 723 F.2d 1566, 221 USPQ 394, 395 (Fed. Cir. 1983); *Professional Economics Incorporated v. Professional Economic Services, Inc.*, 205 USPQ 368, 376 (TTAB 1979); *Argo & Co. v. Carpetsheen Manufacturing, Inc.*, 187 USPQ 366, 367 (TTAB 1975).

The Board has thoroughly reviewed the record of both parties' submissions.² These submissions include statements and exhibits indicating that the parties are

procedurally inappropriate and unavailable. Furthermore, in substance, Opposer sets forth assertions that are inapplicable and/or incomprehensible.

To the extent that Opposer intended the May 28, 2015 filing to constitute an amended pleading, the filing is substantively inappropriate and insufficient inasmuch as it does not constitute a pleading. Cf. Fed. R. Civ. P. 8(a); TBMP § 309.03(a)(2) (2015).

² Opposer's filing is, in large part, a series of arguments on the merits of this opposition proceeding. As emphasized above, the sole issue presently before the Board is the appropriateness of suspension pursuant to Trademark Rule 2.117(a).

Opposer's request, within her response, for "a more definitive statement," and internal discussions that are not relevant to the issue before the Board (*e.g.*, reverse cybersquatting;" "malicious prosecution") are inappropriate in this opposition proceeding and have been given no consideration.

involved in at least one pending civil action. The submissions include copies of pleadings and an order issued in a civil action between the parties that was filed by Applicant and is pending before The County Court at Law Number 5, El Paso County, Texas, Cause No. 2012-DCV04523. That action is captioned *Alliance Riggers & Constructors, LTD. v. Linda S. Restrepo and Carlos E. Restrepo* (“civil action”). Said civil action includes causes for trademark infringement, unfair competition and dilution involving Applicant’s (plaintiff in the civil action) alleged rights in the trademark ALLIANCE RIGGERS & CONSTRUCTORS.

In view of the record, the Board finds that suspension is appropriate pursuant to Trademark Rule 2.117(a). Accordingly, this opposition proceeding is **suspended** pending final disposition of the referenced civil action.

Within twenty days after the final determination of the civil action, the parties shall so notify the Board so that this proceeding may be called up for appropriate action. Such notification to the Board should include a copy of any final order or final judgment which issued in the civil action. Certified copies are not required. However, the submission(s) should be clearly legible and readable. *Hard Rock Café Licensing Corp. v. Elsea*, 48 USPQ2d 1400, 1404 (TTAB 1998).

A proceeding is considered to have been finally determined when a decision on the merits of the case (*i.e.*, a dispositive ruling that ends litigation on the merits) has been rendered, and no appeal has been filed therefrom, or all appeals filed have been decided. *See* TBMP § 510.02(b) (2015).

The Board will issue periodic inquiries to the parties regarding the status of the civil action.

During the suspension period, the parties must notify the Board in writing of any address changes for the parties or their attorneys. In addition, the parties are to promptly inform the Board in writing of any other related cases before this Board or any other tribunal. Upon resumption, if appropriate, the Board may consolidate related Board cases. *See* TBMP § 511 (2015).