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

Proceeding.	91221235
Applicant	Plaintiff Corner Vet, PLLC
Other Party	Defendant First Choice Pet Care, Inc.
Have the parties held their discovery conference as required under Trademark Rules 2.120(a)(1) and (a)(2)?	Yes

Motion for Suspension in View of Civil Proceeding With Consent

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, Corner Vet, PLLC hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Corner Vet, PLLC has secured the express consent of all other parties to this proceeding for the suspension and resetting of dates requested herein.

Corner Vet, PLLC has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Respectfully submitted,

/William D. Raman/

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01/04/2016

TRADEMARK

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

In the matter of Application Serial No. 86/303,848

Mark: **THE CORNER VET EXPRESS**

Corner Vet, PLLC,
Opposer,

v.

First Choice Pet Care, Inc.,
Applicant.

Opposition No. 91221235

CONSENTED MOTION TO SUSPEND FOR CIVIL ACTION

Opposer Corner Vet, PLLC (“Opposer”), with the consent of First Choice Pet Care, Inc., (“Applicant”) moves for suspension of these proceedings pursuant to 37 C.F.R. §2.117(a).

On December 31, 2015, Opposer filed a lawsuit in the Western District of Texas against Applicant for claims including trademark infringement, false designation of origin, false description or representation, and unfair competition arising out of Applicant’s use of the marks THE CORNER VET and THE CORNER VET EXPRESS (the “FCPC Marks”) in commerce (the “Lawsuit”). In support of this motion, Opposer submits as Exhibit A a copy of Opposer’s Complaint, Case No. 1:15-cv-01257 in the Western District of Texas, and further states as follows:

I.

Nature of Opposition and Pending Civil Action

A primary basis for the present opposition is that Applicant’s THE CORNER VET EXPRESS mark “when used for the veterinary services described in the application, so resembles

Opposer's mark, CORNER VET, as to be likely to cause confusion, mistake or deception." *See* Notice of Opposition at ¶ 4.

In the Lawsuit, Opposer claims that Applicant's use of the FCPC Marks violates its rights in its CORNER VET mark and asserts, among other things, that Applicant's use of the FCPC Marks and related activities are "likely to cause confusion, or to cause mistake, or deceive customers and potential customers of Plaintiff, at least as to affiliation, approval, or sponsorship." *See* Exhibit A at p. 5, ¶¶ 16-19. Opposer seeks a permanent injunction barring Applicant from use of "CORNER VET" or any mark confusingly similar to Opposer's CORNER VET mark. Opposer also has asked the court to require Applicant to deliver to the court for destruction, or show proof of destruction, of all materials in Applicant's possession that bear or depict the FCPC Marks or any mark confusingly similar to the CORNER VET mark which are used in connection with the offering of veterinary services. *See Id.* at pp. 6-7. The Lawsuit therefore addresses both the question of likelihood of confusion and the rights of the parties to use their respective marks.

II.

This Proceeding Should Be Suspended Pending the Outcome of the Lawsuit

Whenever a party to a pending proceeding has become engaged in a civil action that "may have a bearing on" the proceedings pending before the Trademark Trial and Appeal Board, the "proceedings before the Board may be suspended until termination of the civil action." 37 C.F.R. § 2.117. Here, the parties to the Lawsuit are also parties to this Opposition proceeding. Additionally, the Lawsuit involves many of the same issues that will be considered in this Opposition and inevitably could have a bearing on these proceedings. Opposer therefore respectfully requests that this Consented Motion to Suspend for Civil Action be in all respects granted and that these proceedings be suspended pending determination of the civil action discussed herein.

Dated: January 4, 2016

Respectfully submitted,

By: /William D. Raman/
William D. Raman
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ATTORNEY FOR OPPOSER

EXHIBIT A

4. This Court has jurisdiction over this case under the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1121 and 1125(a), and under the Judicial Code of the United States, 28 U.S.C. § 1338. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiff's state law claims because those claims are so related to the federal claims that they form part of the same case and controversy. Personal jurisdiction and venue are proper in this district pursuant to 28 U.S.C. § 1391 because Defendant resides here and has committed and continues to commit complained-of acts of trademark infringement in this district.

PLAINTIFF, ITS BUSINESS, AND ITS "CORNER VET" MARK

5. Since at least as early as 2012, CV has used the mark CORNER VET (hereinafter sometimes referred to as the "Mark") in connection with the offering and rendering of veterinarian services, including mobile veterinarian services and veterinary consulting services offered from and rendered in a multitude of locations in Texas and elsewhere. The popularity and demand for CV's services led to the opening of its first brick-and-mortar location in Austin in 2013, with plans to expand to additional locations in the near future.

6. CV has extensively promoted its services offered under the CORNER VET Mark. These promotional efforts extend not only throughout the greater Austin area, but to other cities inside and outside of Texas.

7. Since at least as early as the spring of 2013, CV has advertised and promoted its services under the CORNER VET Mark on its website located at www.austincornervet.com. Other websites owned by CV since 2012, including [www.austincornervet -.net](http://www.austincornervet-.net), [-.us](http://www.austincornervet-.us), etc., www.corner-vet.com, and www.ilovecornervet.com, redirect users to CV's main webpage. The multitude of websites owned by CV that reference "Corner Vet", combined with CV's efforts to optimize search engine results and the popularity of its website, result in a high likelihood that

CV's website will appear at or near the top of consumer internet search results for not only "Corner Vet," but for general searches for veterinarians.

8. Dr. Nicholas Vaughan, a principal in CV, has acted as a consultant for Purina foods and traveled throughout Texas and into other states offering veterinary consultation services using the CORNER VET Mark between 2012 and the present. CV has also been promoted through its involvement with charities such as Austin Pets Alive, through attendance at large pet/veterinary festivals and trade shows (where CV distributes custom tank-tops and t-shirts bearing the CORNER VET Mark), and through articles written by Dr. Vaughan for Austin Fit Magazine.

9. As a result of such promotional efforts, as well as word of mouth from CV's satisfied customers (CV has 5-star ratings on both Yelp.com and Google.com), the CORNER VET Mark is recognized as a designation of the quality services offered by CV, and CV has developed considerable recognition and goodwill in the CORNER VET Mark in Texas and in other states. For example, in addition to his consultation and appearances for Purina, Dr. Vaughan (as a representative of CV) has been invited by pharmaceutical distributors, banks and small businesses, and universities and veterinary schools (including LSU, Georgia, Texas A&M, Virginia Tech, and Tuskegee) to lecture or prepare other presentations to both large and small audiences about his veterinary practice. Through CV, he provides long-distance consultations for other veterinarians and clients in other Texas cities (including in the Dallas/ Fort Worth, Tyler, and Houston areas), as well as other States such as Florida, Alabama, Louisiana, Arkansas, and Minnesota.

10. CV has generated consumer recognition and goodwill for its services provided under the Mark well beyond Austin, Texas. Indeed, based on the high-quality services provided under the Mark, Dr. Vaughan and CV were nominated by the American Veterinary Medical

Foundation for the “America’s Favorite Veterinarian” award in 2014. After a nationwide online poll of consumers, Dr. Vaughan and CV were named as finalists. News pieces, press releases, and the contest itself all made reference to the CORNER VET Mark when mentioning CV and Dr. Vaughan. The CORNER VET Mark and the goodwill associated therewith are valuable assets of CV.

DEFENDANT AND ITS ACTIVITIES

11. On June 9, 2014, FCPC filed U.S. Application Serial No. 86303832 for the mark, THE CORNER VET, for “Veterinary services; veterinary surgery; veterinary specialty services providing advanced medical, diagnostic or surgical services for animals; veterinary emergency and trauma services.”

12. On June 9, 2014, FCPC also filed U.S. Application Serial No. 86303848 for the mark, THE CORNER VET EXPRESS, for “Veterinary services; veterinary surgery; veterinary specialty services providing advanced medical, diagnostic or surgical services for animals; veterinary emergency and trauma services.”

13. At least as early as August 2014, CV provided FCPC actual notice of CV’s claim of prior use in Texas of “CORNER VET.”

14. FCPC nevertheless began use in commerce of “THE CORNER VET” or “THE CORNER VET EXPRESS” (the “FCPC Marks”) in or around December 2014.

15. Defendant’s use of the FCPC Marks will allow Defendant to receive the benefit of the goodwill and recognition built up at great labor and expense by CV in the CORNER VET Mark and will allow Defendant to gain acceptance for its services based not solely on Defendant’s own merits, but also on the reputation and goodwill of CV.

16. Defendant's use of the FCPC Marks constitutes an invasion of valuable property rights of Plaintiff in the CORNER VET Mark and in the attendant goodwill in a manner that unjustly enriches Defendant.

17. Defendant's use of the FCPC Marks places the valuable reputation and goodwill of CV in the hands of Defendant, over whom Plaintiff has absolutely no control.

18. While prior knowledge by Defendant is not necessary for Plaintiff to prevail, upon information and belief, Defendant was fully aware of the use by CV of the CORNER VET Mark prior to Defendant's adoption of the FCPC Marks for its services.

19. The above-mentioned activities of Defendant are likely to cause confusion, or to cause mistake, or deceive customers and potential customers of Plaintiff, at least as to affiliation, approval, or sponsorship. Indeed, CV has already been made aware of instances of actual confusion, mistake, or deception among members of the trade and consumers.

COUNT I

FEDERAL UNFAIR COMPETITION

20. Plaintiff re-alleges paragraphs 1 - 19 hereof as if fully set forth herein.

21. The acts of Defendant complained of above constitute common law trademark infringement and unfair competition in violation of 15 U.S.C. § 1125(a).

22. Upon information and belief, the acts of Defendant complained of above are willful and deliberate, entitling CV to increased damages, attorneys fees and costs under 15 U.S.C. § 1117.

COUNT II

STATE COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

23. Plaintiff re-alleges Paragraphs 1 - 19 hereof as if fully set forth herein.

24. The acts of Defendant complained of above constitute common law trademark infringement and unfair competition in violation of the common law of the state of Texas.

IRREPARABLE INJURY

25. The acts of Defendant complained of above are jeopardizing and, if allowed to proceed, will continue to jeopardize the goodwill of Plaintiff in the CORNER VET Mark. Such acts have caused and are causing irreparable injury to Plaintiff and the consuming public.

26. Unless the acts of Defendant complained of above are restrained by this Court, they will be continued and they will cause irreparable injury to Plaintiff and to the public for which there is no adequate remedy at law.

JURY DEMAND

27. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury as to all claims.

PRAYER

WHEREFORE, Plaintiff prays:

(a) That Defendant, its officers, directors, agents, servants, employees, attorneys, successors, assigns, related companies, and those acting in concert with them and/or any of them, be preliminarily and permanently enjoined and restrained from using – in connection with the promotion, advertising, offering or rendering of veterinary services; veterinary surgery, veterinary specialty services providing advanced medical, diagnostic or surgical services for animals, or veterinary emergency and trauma services – the name or mark CORNER VET, or any mark confusingly similar to the CORNER VET Mark;

(b) That Defendant, its officers, directors, agents, servants, employees, attorneys, successors, assigns, related companies, and those acting in concert with them and/or any of them, be required to deliver to the Court for destruction, or to show proof of said

destruction, of any and all displays, signs, circulars, promotional materials, advertisements, pens, directories, pamphlets, and other materials in Defendant's possession, custody, or control which bear or depict the FCPC Marks or any mark confusingly similar to the CORNER VET Mark which is used in connection with the offering of veterinary services; veterinary surgery, veterinary specialty services providing advanced medical, diagnostic or surgical services for animals, or veterinary emergency and trauma services, as well as all plates, molds, casts, and other means of reproducing, counterfeiting, copying or otherwise imitating the CORNER VET Mark or any mark confusingly similar thereto in association with the offering of such goods/services;

(c) That Defendant be ordered to file with this Court and to serve upon Plaintiff, within thirty days after the entry of an injunction, a report in writing and under oath setting forth in detail the manner in which Defendant has complied with the injunction;

(d) That, pursuant to 15 U.S.C. § 1117(a), Plaintiff be awarded its damages and that the award of those damages be increased three times;

(e) That, pursuant to 15 U.S.C. § 1117(a), Plaintiff be awarded an accounting of Defendant's profits and that the award of those profits be increased at least three times;

(f) That, pursuant to 15 U.S.C. § 1117(a), Plaintiff be awarded its reasonable attorney fees; and

(g) That Plaintiff be awarded such other and further relief as the Court may deem appropriate pursuant to the facts and the principles of equity.

Respectfully Submitted,

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