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

Proceeding	91227926
Party	Plaintiff BB&HC, LLC
Correspondence Address	John Di Giacomo Revision Legal, PLLC 109 E. Front St.Suite 309 Traverse City, MI 49684 UNITED STATES john@revisionlegal.com
Submission	Motion to Suspend for Civil Action
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Signature	/JAD/
Date	08/22/2016
Attachments	08-22-16 Stipulated Joint Motion to Suspend.pdf(75640 bytes) 08-22-16 Brief in Support of Stipulated Joint Motion.pdf(82210 bytes)

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

BB&HC, LLC

Petitioner,

v.

Proceeding Nos: 92064204,
91227926

EARTHY, LLC,

Registrant.

STIPULATION AND JOINT MOTION TO STAY PROCEEDINGS

Petitioner BB&HC, LLC, a Michigan limited liability company, by and through its attorneys Revision Legal, PLLC, and Registrant, Earthy, LLC, by and through its attorneys McDermott, Will, & Emery, hereby jointly request, pursuant to 37 CFR § 2.117(c) and TBMP § 510.02(a), that the Board suspend these actions in light of a civil action pending before the Northern District of Illinois, *Earthy, LLC v. BB&HC, LLC*, Case No. 1:16-cv-4934, which will have a bearing on these opposition and cancellation proceedings. Filed herewith in support of this Motion is a memorandum of law in support of this Stipulation and Joint Motion.

PROOF OF SERVICE

I, John Di Giacomo, hereby certify and declare that on August 22, 2016, I served the foregoing Stipulated Joint Motion to Stay Proceedings on all attorneys of record via first class mail.

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

BB&HC, LLC

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Proceeding Nos: 92064204,
91227926

EARTHY, LLC,

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**BRIEF IN SUPPORT OF STIPULATION AND JOINT MOTION TO STAY
PROCEEDINGS**

Petitioner BB&HC, LLC, a Michigan limited liability company, by and through its attorneys Revision Legal, PLLC, and Registrant, Earthy, LLC, by and through its attorneys McDermott, Will, & Emery, hereby jointly request, pursuant to 37 CFR § 2.117(c) and TBMP § 510.02(a), that the Board suspend these actions in light of a civil action pending before the Northern District of Illinois, *Earthy, LLC v. BB&HC, LLC*, Case No. 1:16-cv-4934. For their Brief in Support of Stipulation and Joint Motion to Stay Proceedings, the parties state as follows:

I. ARGUMENT

The Board has the discretion to suspend opposition and cancellation proceedings when the final resolution of civil litigation “may have a bearing on” issues raised in the opposition or cancellation proceeding. 37 C.F.R. § 2.117(a). TTAB “[p]roceedings may also be suspended, for good cause, upon motion or a stipulation of the parties approved by the Board.” 37 C.F.R. § 2.117(c); *see also Midland Coop., Inc. v. Midland Int’l Corp.*, 421 F.2d 754 (C.C.P.A. 1970). In the matter of *Earthy, LLC v. BB&HC, LLC*, which is pending in front of the Northern District of Illinois (“ND Ill. Litigation”), Plaintiff Earthy, LLC filed a declaratory judgment action

requesting that the Court declare that Plaintiff Earthy, LLC's E EARTHY mark (Reg. No. 5,004,400) does not infringe upon Defendant's EARTHY DELIGHTS mark (Reg. No. 2,609,911). In response, Defendant has filed a Counter-Claim alleging claims of trademark infringement, false designation of origin, cybersquatting, a violation of the Illinois Deceptive Trade Practices Act, and cancellation of Earthy, LLC's E EARTHY mark. Among Defendant's counter-claims in the ND Ill. Litigation, Defendant has alleged that Plaintiff's use of the EARTHY ORGANIC mark (Serial No. 86,822,838) infringes upon Defendant's EARTHY DELIGHTS mark.

The parties hereby stipulate and agree that these proceedings should be suspended pending the disposition of the ND Ill. Litigation because the issues raised in that litigation are coextensive with, and will most certainly have a bearing on, these opposition and cancellation proceedings. Consequently, the parties believe that good cause exists to suspend these proceedings and, therefore, respectfully request that the Board suspend them until such time as it is notified by the parties that the ND Ill. Litigation has been disposed of or resolved.

II. CONCLUSION

For the foregoing reasons, the parties respectfully request that the Board suspend these proceedings.

/s/ JAD
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