

ESTTA Tracking number: **ESTTA771935**

Filing date: **09/21/2016**

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

Proceeding.	91229792
Applicant	Defendant Belmora LLC
Other Party	Plaintiff Bayer Consumer Care AG
Have the parties held their discovery conference as required under Trademark Rules 2.120(a)(1) and (a)(2)?	No

### **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, Belmora LLC hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Belmora LLC has secured the express consent of all other parties to this proceeding for the suspension and resetting of dates requested herein.

Belmora LLC 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 First Class Mail on this date.

Respectfully submitted,

/Kate A. Sozio/

Kate A. Sozio

ksozio@archerlaw.com

pb@pattishall.com, blc@pattishall.com, jae@pattishall.com, lrb@pattishall.com, docket@pattishall.com

09/21/2016

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

**In the Matter of Trademark Application No.: 86/959,320**

<b>Bayer Consumer Care AG</b>	:	<b>Opposition No. 91229792</b>
	:	
	:	<b>Serial No. 86959320</b>
	:	<b>MARK: FLANAX</b>
<b>Opposer,</b>	:	
	:	
v.	:	
	:	
<b>Belmora, LLC,</b>	:	
	:	
	:	
<b>Applicant.</b>	:	

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**APPLICANT BELMORA, LLC’S CONSENTED MOTION TO SUSPEND  
PROCEEDING PENDING DISPOSITION OF CIVIL LITIGATION**

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Pursuant to 37 C.F.R. § 2.117 and T.B.M.P. 510.02, Belmora, LLC (“Applicant” or “Belmora”) hereby moves the Board, with Opposer’s consent, to suspend this proceeding pending the final outcome of a federal civil action between the parties.

In support of this motion, Applicant states that:

1. The instant proceeding before the Board involves one trademark application owned by Applicant to register the mark FLANAX for Antacids; Cough lozenges; Oral analgesics; Pharmaceutical preparations, namely, an analgesic for human consumption taken orally; Topical analgesic creams; Topical analgesics (Application Ser. No. 86959320).

2. In June 2007, Bayer Consumer Care (“Opposer” or “Bayer”) petitioned the Trademark Trial and Appeal Board (“TTAB”) to cancel Applicant’s Registration No. 2,924,440

for the trademark FLANAX on the ground that Applicant allegedly misrepresented the source of its products as coming from Bayer, in violation of 15 U.S.C. § 1064(3). Cancellation No. 92047741.

3. On April 17, 2014, the TTAB issued a decision ordering cancellation of Applicant's FLANAX trademark registration pursuant to 15 U.S.C. § 1064(3).

4. Applicant sought review of the TTAB's decision via civil action in the United States District Court for the Eastern District of Virginia, pursuant to 15 U.S.C. § 1071(b), Case No. 1:14-cv-00847-GBL-JFA (the "Civil Action").

5. On March 2, 2015, the District Court entered judgment for Applicant/Plaintiff Belmora in the Civil Action. Bayer appealed.

6. On March 23, 2016, the Fourth Circuit vacated the judgment of the District Court for the Eastern District of Virginia and remanded the case.

7. On March 31, 2016, Applicant filed Application Serial No. 86959320—the application opposed herein—for the FLANAX mark.

8. On September 12, 2016, Chief Justice Roberts granted Belmora's request for an extension of time to file a petition for a writ of certiorari. Belmora's petition is due October 20, 2016.

9. The Civil Action includes the two parties to this opposition, and the same mark, FLANAX. The civil action and this opposition have a common issue, namely the alleged violation of 15 U.S.C. § 1064(3), and therefore, the ultimate outcome of the Civil Action and its potential appeal may have a bearing on the instant proceeding.

10. The parties therefore respectfully request that the Board suspend the instant proceeding pending the final outcome of the Civil Action and its potential appeal.

11. Opposer, by its counsel, Jessica A. Eckhoff, Esq., consented to this motion via teleconference on September 21, 2016.

Respectfully submitted,

ARCHER & GREINER  
A Professional Corporation  
*Attorneys for Applicant*  
*Belmora, LLC*

By: /s/ Kate A. Sozio  
KATE A. SOZIO, ESQUIRE

Dated: September 21, 2016.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **CONSENTED MOTION TO SUSPEND  
PROCEEDING PENDING OUTCOME OF CIVIL ACTION** was served upon

Phillip Barengolts  
Jessica A. Eckhoff  
Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP  
200 South Wacker Drive  
Suite 2900  
Chicago, IL 60606-5896  
[pb@pattishall.com](mailto:pb@pattishall.com)  
[jae@pattishall.com](mailto:jae@pattishall.com)

this 21st day of September, 2016, via email and first class mail, postage prepaid.

By: /s/ Kate A. Sozio  
KATE A. SOZIO, ESQUIRE

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