

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

Mailed: September 23, 2005

Cancellation No. 92044538

Missiontrek Ltd. Co.

v.

ONFOLIO, INC.

**David Mermelstein, Attorney:**

Now before the Board are respondent's motion for summary judgment filed July 5, 2005, and petitioner's motion to suspend this proceeding in view of Cancellation No. 92044856.

As a preliminary matter, we note that petitioner has apparently submitted a paper to the Board via facsimile. See Board's docket entry #12. The fax was apparently transmitted to the Trademark Assistance Center, which forwarded the paper to the Board.

The TTAB does not accept facsimile transmissions for filing, unless such filing is specifically requested by the Board. Trademark Rule 2.195(d) ("Facsimile transmissions are not permitted and if submitted, will not be accorded a date of receipt, in the following situations: ... (3) Correspondence to be filed with the Trademark Trial and Appeal Board, except notices of ex parte appeal...")

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Accordingly, petitioner's facsimile submission is not considered part of the record in this case, and will be given no consideration.<sup>1</sup>

We turn next to petitioner's motion to suspend this proceeding in view of Cancellation No. 92044856. The standard for suspension (as relevant here) is set out in Trademark Rule 2.117(a):

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.

While the Board is vested with broad discretion in determining whether to suspend in view of another proceeding the burden of the moving party to invoke the rule is relatively low; a movant need only demonstrate that the other proceeding "may have a bearing on the case." (emphasis added.) It need not be proven that the other proceeding would be dispositive of any issue in the instant case, and the other proceeding need not involve the same parties. See generally, TBMP § 510.02 (2d ed. rev. 2005)(and cases cited therein).

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<sup>1</sup> The parties are strongly urged to use ESTTA, the Board's electronic filing facility, for the filing of all papers. ESTTA is available 24/7, and provides an immediate filing receipt and automatic entry of papers into the Board's record. Some ESTTA papers - including certain consent motions - are automatically processed, reducing the Board's workload and

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Nonetheless, we find that petitioner's motion in this case utterly fails to demonstrate that Cancellation No. 92044856 has anything to do with this proceeding, except that petitioner happens to be involved in both cases. The '856 cancellation involves a different defendant, a different mark, and different grounds for cancellation. Although petitioner's motion states that "[b]y filing [Cancellation No. 92044856], Petitioner will significantly clarify issues raised in" this proceeding, petitioner sets out no facts, law, or argument in support of its contention.<sup>2</sup>

Petitioner's motion to suspend is accordingly DENIED. A ruling on respondent's motion for summary judgment will be issued in due course.

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<sup>2</sup> The filing of groundless or unsupported motions are a burden upon the opposing party and the Board, and accomplish little more than the waste of time. We need not determine here whether petitioner's motion to suspend was frivolous. However, if there was any reasonable basis for suspension, it was not set out in petitioner's motion, and was not apparent to the Board upon our own investigation. See Trademark Rule 2.127(a) ("Every motion ... shall contain a full statement of the grounds...").

The parties are reminded that their presentation of a motion to the Board constitutes their certification, *inter alia*, that after reasonable investigation, the filer believes that the motion is well-grounded in law and fact. Trademark Rule 10.18(b)(2); Fed. R. Civ. P. 11(b).