

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

Mailed: April 1, 2011

Cancellation No. 92052344

The Unlimited/Alaska Hats &
Apparel

v.

Arabica Funding, Inc.

**George C. Pologeorgis,
Interlocutory Attorney:**

On March 23, 2011, petitioner filed a communication with the Board which is comprised of (1) respondent's settlement communication with petitioner under Fed. R. Evid. 408 and (2) petitioner's response thereto.¹ Such communications are confidential in nature and should not be filed with the Board. The Board has designated this filing as confidential so that the public may not view the filing in light of its highly confidential nature. The Board does note, however, that included in petitioner's March 23, 2011 filing is a copy of a

¹ Petitioner's March 23, 2011 filing does not demonstrate proof of service of the same upon respondent's counsel, as required by Trademark Rule 2.119. In order to expedite matters, a copy of this filing is forwarded to respondent's counsel with her copy of the instant order.

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civil action complaint filed in the United States District Court for the District of Minnesota² which involves the parties herein.

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 have a bearing on the Board case. See Trademark Rule 2.117(a).

A review of the pleadings in the civil case indicates that a decision by the district court could be dispositive of, or have a bearing on, the issues in this cancellation proceeding.³

Accordingly, proceedings herein are **suspended** pending final disposition of the civil action between the parties.

Within **twenty days** after the final determination of the civil action, the interested party should notify the Board so that this case may be called up for appropriate action. During the suspension period the Board should be notified of

² Case 0:11-cv-00504, styled *Arabica Funding, Inc. and Caribou Coffee Company, Inv. v. The Unlimited/Alaska Hats & Apparel; Roger W. Zak; and Ronald Maclure d/b/a The Coffee Roastery*, filed in the United States District Court for the District of Minnesota on or about March 1, 2011.

³ Moreover, to the extent that a civil action in a Federal district court involves issues in common with those in a Board proceeding, the district court decision would be binding on the Board, whereas the Board decision is merely advisory to the district court. See *American Bakeries Co. v. Pan-O-Gold Baking Co.*, 2 USPQ2d 1208 (D.C. Minn. 1986). Further, Board decisions are appealable to the district court. See Section 21 of the Trademark Act, and *Goya Foods, Inc. v. Tropicana Products Inc.*, 846 F.2d 848, 6 USPQ2d 1950, at 1953 (2d Cir. 1988).

any address changes for the parties or their attorneys.

As a final matter, on March 28, 2011, petitioner filed a copy of its pretrial disclosures that were apparently served on counsel for respondent, with the Board. Pretrial disclosures should not be filed with the Board except when submitted with a motion to strike the testimony of witness for lack of proper pretrial disclosures or on the basis that the pretrial disclosure is inadequate on its face. This is not the situation here. Accordingly, petitioner is advised that the Board will give no further consideration to petitioner's pretrial disclosures, filed on march 28, 2011.