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

Proceeding	92054855
Party	Defendant Fashion Exchange, LLC
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Submission	Motion to Suspend for Civil Action
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Date	04/09/2014
Attachments	Fashion Exchange Motion to Suspend.pdf(1724426 bytes )

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

_____	)	
HYBRID PROMOTIONS, LLC,	)	
	)	
Petitioner,	)	Cancellation No. 92054855
	)	
v.	)	<b>RESPONDENT’S</b>
	)	<b>MOTION TO SUSPEND</b>
FASHION EXCHANGE, LLC,	)	<b>PURSUANT TO</b>
	)	<b>TRADEMARK RULE 2.117(a)</b>
Respondent.	)	
_____	)	

COMES NOW Respondent Fashion Exchange, LLC (“Respondent”), by and through its attorneys, Zarin & Associates P.C., to move the Trademark Trial and Appeal Board (“Board”) to suspend this cancellation proceeding, pursuant to Trademark Rule 2.117(a) and TBMP 510.02(a), pending resolution of a federal action filed by Respondent, and currently pending, against Hybrid Promotions, LLC (“Petitioner”).

Whenever it comes to the attention of the Board that the parties to a case pending before it are involved in a civil action which may be dispositive of the Board case, proceedings before the Board may be suspended until final determination of the civil action. See Trademark Rule 2.117(a). This is so because, to the extent that a civil action in a Federal district court involves issues in common with those in a proceeding before the Board, the decision of the Federal district court is binding upon the Board, while the decision of the Board is not binding upon the court.

*Luv n’ Care, Ltd. V. New Vent Designs, Inc.*, 2000 TTAB LEXIS 342 at \*8 (TTAB 2000).

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. Judicial economy lies in the suspension of Board proceedings because, *inter alia*, the Board has limited jurisdiction involving the issue of registrability only; the Board decision is advisory to the Court, while a U.S. District Court decision is binding on the parties before this administrative Board; and the Board decision is appealable to the U.S. District Court.

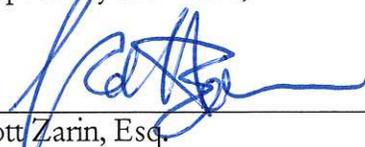
*Black Box Corporation of Pennsylvania and BB Technologies, Inc. v. Better Box Communications Ltd.*, 2002 TTAB LEXIS 253 at \*4 (TTAB 2002).

In the instant cancellation proceeding, Petitioner seeks to cancel Respondent's trademark registration for the mark HYBRID & COMPANY, Registration No. 3,723,220. On February 26, 2014, Respondent filed an action in United States District Court for the Southern District of New York, *The Fashion Exchange LLC v. Hybrid Promotions, LLC, et. al.*, case no. 14-1254, against Petitioner, *inter alia*, for a declaration of ownership of the trademark HYBRID & COMPANY, trademark infringement, federal and New York state law unfair competition and deceptive trade practices.

All of Respondent's claims in the federal action have a direct bearing on the issues currently before the Board in this action. In particular, in its declaration of ownership claim, Respondent requests the federal court to address precisely the same question at issue before the Board; that is, Respondent's ownership of the trademark HYBRID & COMPANY. Under Trademark Rule 2.117(a), therefore, the Board should suspend the instant cancellation proceeding pending resolution of the pending federal action. See e.g. *Society of Mexican American Engineers and Scientists, Inc. v. GVR Public Relations*, 2002 U.S. TTAB LEXIS 697 at \*11 (TTAB 2002) ("Further, because the issues under consideration in the civil action include trademark infringement; false designation of origin; and dilution, all with regard to opposer's asserted MAES marks, the decision in the civil case may include a determination of opposer's right thereto. Any such determination of opposer's rights to its asserted mark in the civil action will have a bearing on the issues before the Board.")

For all the foregoing reasons, the Board should suspend the instant cancellation proceeding pending resolution of the federal action currently pending before United States District Court for the Southern District of New York.

Respectfully submitted,



Dated: April 9, 2014

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Attorneys for Respondent  
Fashion Exchange, LLC

**Certificate of Service**

I, Scott Zarin, declare, under penalty of perjury, that on April 9, 2014 I caused to be served, via e-mail and First Class U.S. Mail, in *Hybrid Promotions, LLC v. Fashion Exchange, LLC*, TTAB Cancellation No. 92054855:

**Respondent's Motion to Suspend Pursuant to Trademark Rule 2.117(a)**

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Dated: \_\_\_\_\_

4/9/14

  
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