

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

BUO

Mailed: July 2, 2013

Opposition No. 92055964

A partnership, d.b.a. Ku de
Ta, comprised of Guy Neale,
Aki Kotzamichalis, Made
Wiranatha, et al.

v.

Nine Squares Pty Ltd

Benjamin U. Okeke, Interlocutory Attorney:

Registrant is owner of U.S. Registration No. 4120131,
issued under the Madrid Protocol, Trademark Act § 66, 15
U.S.C. 1141. The foreign registration upon which
registrant based its underlying application is Australian
Registration No. 1074014.

Now before the Board is registrant's motion, filed
January 17, 2013, to suspend the instant proceeding pending
disposition of a civil action before The High Court of the
Republic of Singapore ("the civil action"). In support of
its motion, registrant asserts that the civil action
presents similar issues to those present before the Board
and that resolution of the ownership issues presented in

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the civil action will have a bearing on this proceeding. Petitioner contests this motion, stating that "the Singapore action relates specifically to the parties' rights *in Singapore*," and that inasmuch as the civil action will not affect the underlying Australian registration, that case will have no bearing on this matter.

The Board has considered the parties' submissions and presumes the parties' familiarity with the factual bases for the motion, and will not recount the facts or arguments here, except as necessary to explain the decision.

It is the policy of the Board to suspend proceedings whenever it comes to the attention of the Board that a party or parties to a case pending before it 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); *General Motors Corp. v. Cadillac Club Fashions Inc.*, 22 USPQ2d 1933 (TTAB 1992). Suspension of a Board proceeding pending the final determination of another proceeding is solely within the discretion of the Board. See *Opticians Ass'n of Am. v. Independent Opticians of Am. Inc.*, 734 F. Supp. 1171, 14 USPQ2d 2021 (D.N.J. 1990).

Registrant has submitted, with its motion, a copy of the "Statement of Claim" and "Defence" [sic] filed in the civil action. While the parties to the civil action mirror

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the parties to the Board proceeding, the nexus between the issues present in that action and the instant proceeding is tenuous at best. Registrant cites *Marie Claire Album S.A. v. Kruger GmbH & Co. KG*, 29 USPQ2d 1792 (TTAB 1993), to support its proposition that "even a foreign proceeding provides a basis for suspension if the foreign proceeding may have a bearing on the Board proceeding." This proposition, while true, is not supported by the facts of this case. Registrant has failed to meet its burden of establishing that determination of the foreign litigation will have a bearing on the Board's proceeding.

Unlike the facts presented in *Marie Claire Album*, the underlying Australian registration is not at issue in the Foreign proceeding, as the German registration was in the cited case, therefore the validity of the subject United States registration is not directly affected by the determination of the civil action. *Cf. Marie Claire Album S.A.*, 29 USPQ2d at 1793-94.

Registrant points to the ownership issues to be decided in the civil action related to ownership of the KU DE TA mark in light of a partnership agreement between the parties. However, copies of the partnership agreements submitted by registrant reveal that the parties' agreements only relate to "the restaurant business name 'Ku de Ta' to

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be carried out *in Bali, Indonesia,*" and that any disputes arising out of the partnership agreement are to be decided by an arbitrator. P'ship Agmt., ¶¶ 1(1) and 14(3) (emphasis added). Therefore, it remains unclear whether resolution of the civil action, particularly as it relates to the parties' rights over the mark in Indonesia, would have any bearing on the parties' rights in the United States, where registration based upon use *in the United States* is at issue.

Therefore, the Board is not convinced that suspension would serve judicial economy, but instead considers suspension to be inappropriate under these circumstances. Accordingly, registrant's motion to suspend is **DENIED**.

The disclosure, discovery and trial dates are reset as follows:

Expert Disclosures Due	10/31/2013
Discovery Closes	11/30/2013
Plaintiff's Pretrial Disclosures	1/14/2014
Plaintiff's 30-day Trial Period Ends	2/28/2014
Defendant's Pretrial Disclosures	3/15/2014
Defendant's 30-day Trial Period Ends	4/29/2014
Plaintiff's Rebuttal Disclosures	5/14/2014
Plaintiff's 15-day Rebuttal Period Ends	6/13/2014

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days

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after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.