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

Proceeding	92061135
Party	Plaintiff Mattoon Rural King Supply, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MATTOON RURAL KING SUPPLY, INC.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92061135
)	Registration No. 3,765,628
)	
WEEMS INDUSTRIES, INC. d/b/a LEGACY)	
MANUFACTURING COMPANY,)	
)	
Respondent.)	
)	

**PETITIONER’S MOTION FOR RECONSIDERATION OF
BOARD’S DECISION TO SUSPEND PROCEEDINGS**

COMES NOW Petitioner Mattoon Rural King Supply, Inc. (“Rural King”) and, for its Motion for Reconsideration of Board’s Decision to Suspend Proceedings, states as follows:

On March 20, 2015, Rural King filed a petition to cancel Weems’ registration on the Supplemental Register, U.S. Reg. No. 3,765,628, for the use of bright green on its air hoses (the “Purported Mark”). On May 1, 2015, Weems filed its Answer and a Motion to Suspend Proceedings based upon a Complaint that Weems had filed that same day—six weeks after the initiation of this Cancellation Proceeding—in the United States District Court for the Northern District of Iowa, Case No. 1:15-cv-00036-LRR. On May 18, 2015, Rural King filed its Memorandum in Opposition to Weem’s Motion to Suspend.

On June 5, 2015, the Board granted Weems’ Motion and suspended the instant proceeding pending final determination of Case No. 1:15-cv-00036-LRR. In light of the recent Supreme Court decision in *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. ---, 135 S. Ct. 1293 (Mar. 24, 2015), Rural King respectfully requests that the Board reconsider its June 5, 2015

Suspension, which granted Weems' request to circumvent the Board's authority and thwart Rural King's choice of forum in its first-filed Petition for Cancellation.

The Board's decision to suspend this Cancellation Proceeding conflicts with recent Supreme Court guidance in the *B & B Hardware* decision. Because of the issue preclusive effect of TTAB decisions and the deference now afforded the TTAB by the Supreme Court, it is no longer appropriate for the Board to suspend TTAB proceedings as a matter of course. Moreover, the Board's reliance upon decisions pre-dating *B & B Hardware* is misplaced as *B & B Hardware* fundamentally altered the relationship between the Board and the federal District Court. Indeed, the Supreme Court went to great lengths to compare the many similarities in procedure, to stress the import of TTAB proceedings, and to emphasize the issue preclusive effects of Board decisions. *See B & B Hardware, Inc.*, 135 S. Ct. at 1309-10. Given the deference afforded Board decisions and their potential issue preclusive effect on District Courts, Rural King respectfully requests that the Board reconsider its June 5, 2015 Suspension as well as its reliance on procedures and prior decisions, which now directly conflict with Supreme Court guidance.

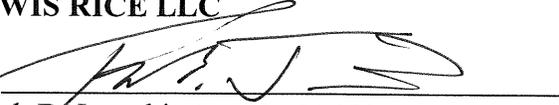
Further, and as noted by the Board in its June 5, 2015 Suspension, the central issue before the Board and the District Court is whether Weems possesses any "rights in the involved mark." This issue is more squarely within the Board's expertise, as it involves complicated and technical issues of functionality, shade confusion, and acquired distinctiveness. The Board's decision as to this issue will quickly dispose of this cancellation proceeding as well as the District Court action. Based upon the Board's expertise and the issue preclusive effects of its decision, the circumstances of this case require that the Board reconsider and lift the suspension as to the first filed action and instead proceed toward a final determination.

For the foregoing reasons, Rural King respectfully requests that the Board reconsider and lift its June 5, 2015 Suspension in light of *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. ---, 135 S. Ct. 1293 (Mar. 24, 2015) and instead proceed with its disposition of this case.

Dated: June 11, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 11, 2015, a copy of the above and foregoing was served upon Respondent's counsel, via electronic mail and First Class Mail, postage prepaid, as follows:

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