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

Proceeding	92062793
Party	Defendant Affordable Naturals, LLC
Correspondence Address	AFFORDABLE NATURALS LLC 6401 W 106TH STREET BLOOMINGTON, MN 55438 UNITED STATES
Submission	Motion to Suspend for Civil Action
Filer's Name	Carl E. Christensen
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Date	01/13/2016
Attachments	Motion to Suspend.pdf(88155 bytes )

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

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In the matter of Registration No.: 3,935,337	§	
Mark: SIMPLY	§	
	§	
Registration Date: Mar. 22, 2011	§	Cancellation No. 92062793
	§	
NutraMarks, Inc.,	§	
	§	
Petitioner,	§	
	§	
v.	§	
	§	
Affordable Naturals, LLC,	§	
	§	
Respondent.	§	
	§	

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**MOTION TO SUSPEND PROCEEDINGS PENDING CIVIL ACTION  
(TRADEMARK RULE 2.117(a) & (c))**

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Pursuant to TTAB Rules §§ 2.117(a), (c) and TBMP § 510.02(a), Respondent Affordable Naturals, LLC (“Affordable Naturals”) moves for suspension of Petitioner’s above-captioned Cancellation, pending the disposition of a related civil action before the United States District Court for the District of Utah, *Nutraceutical Corp., et al. v. Affordable Naturals, LLC*, No. 2:14-CV-00907-JNP-PMW (the “Utah Matter”). Additionally, Respondent files this Motion to Suspend concurrently with its Motion to Extend Time to Answer. In doing so, and in the event the underlying civil matter is determined on its merits, Respondent respectfully requests no less than forty (40) days from the date of resumption—or any other time as prescribed by the Trademark Rules—to Answer Petitioner’s Cancellation.

Petitioner’s Cancellation here runs parallel with two other actions: The Utah Matter and

an related Opposition proceeding initiated by Affordable Naturals. The Utah Matter involves the same parties, the same trademarks, and the same issues as those raised by Petitioner in this Cancellation, including whether the likelihood of confusion exists between Respondent’s SIMPLY mark and Petitioner’s SIMPLERS mark, as well as the issue of seniority for their respective marks. Moreover, AN commenced an Opposition proceeding against Petitioner, *Affordable Naturals, LLC v. NutraMarks, Inc.*, Opposition No. 91218720 on October 7, 2014. On February 10, 2015, the Board suspended that Opposition pending the outcome of the Utah Matter because the Opposition was based on the same issues above—namely, the same parties and the same trademarks, as well as the issues of likelihood of confusion and seniority.

Final determination of the Utah Matter will have a bearing on this Cancellation. When the Board is made aware that the parties to a Board proceeding are involved in a civil action, the result of which can be dispositive of the Board proceeding, the Board should suspend the proceeding until final determination of the civil action. 37 C.F.R. § 2.117(a); *Miller v. B & H Foods, Inc.*, 209 U.S.P.Q. 357, 359 (T.T.A.B. 1981) (“[W]here, as here, the civil action between the parties may be dispositive or have a direct bearing on the issues in a proceeding before the Board, it is the practice to suspend the proceeding before the Board to await the outcome of the civil action and to determine its effect on the issues in the action in the [PTO].”); *General Motors Corp. v. Cadillac Club Fashions, Inc.*, 22 U.S.P.Q.2d 1933 (T.T.A.B. 1992); *Toro, Inc. v. Hardigg Indus., Inc.*, 187 U.S.P.Q. 689 (T.T.A.B. 1975) (granting a motion to suspend following a civil action for injunction, “[T]here can be no doubt...that the final resolution of the civil action may be dispositive of the issues involved in this proceeding”).

Suspending this Cancellation is proper. The primary consideration for the Board here is that suspension of this Cancellation will avoid unnecessary and duplicative expenses—and

potentially duplicative results—when, in reality, the outcome of the Utah Matter will likely adjudicate the issues Petitioner raises here. In fact, the same issues central to this Cancellation are the exact same issues of AN’s Opposition, No. 91218720, which the Board has already suspended—and the Board should act consistently here to suspend the Cancellation and limit simultaneous litigation revolving around the same central facts and issues.

Counsel for Affordable Naturals contacted counsel for Petitioner, Nadya Davis, in a communication dated December 7, 2015, and she agreed to stay this proceeding pending resolution of the related litigation.

For these reasons, Respondent Affordable Naturals, LLC respectfully requests the Board grant this Motion to Suspend Petitioner’s Cancellation, pending the final disposition of the Utah Matter.

Respectfully submitted,

**CHRISTENSEN LAW OFFICE PLLC**

Dated: January 13, 2016

/s/ Carl E. Christensen  
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ATTORNEYS FOR RESPONDENT  
Affordable Naturals, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion to Suspend has been served on January 13, 2016, to the following by U.S. First Class Mail, postage prepaid:

Nadya C. Davis  
1800 Broadway  
Suite 300  
Boulder, Colorado 80302-5234

and by e-mail to: *ncdavis@hollandhart.com*.

/s/ Carl E. Christensen  
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Carl E. Christensen (MN #350412)