

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Mailed: March 3, 2016

Cancellation No. 92062794

*WeMash, Inc.*

*v.*

*WEMESH Inc.*

**M. Catherine Faint,  
Interlocutory Attorney:**

This case comes up on Respondent's motion (filed January 15, 2016) to suspend this proceeding pending final determination of Civil Action No. 2:15-cv-08719-JFW-JPR filed in the U.S. District Court for the Central District of California. Petitioner agrees that the civil action may have a bearing on this Board proceeding, but argues that only a sixty-day suspension is necessary because of a pending motion to dismiss in the civil action.

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 decision by the district court may be binding on the Board whereas a determination by the Board as to a defendant's right to obtain or retain a registration would not be binding or res judicata in respect to the proceeding pending before the court. *Whopper-Burger, Inc. v. Burger*

*King Corp.*, 171 USPQ 805, 807 (TTAB 1971). Thus, the civil action does not have to be dispositive of the Board proceeding to warrant suspension, it need only have a bearing on the issues before the Board. *New Orleans La. Saints LLC v. Who Dat?*, 99 USPQ2d 1550, 1552 (TTAB 2011); Trademark Rule 2.117(a).

The Board considers a civil proceeding to have been finally determined when a decision on the merits of the case (i.e., a dispositive ruling that ends litigation on the merits) has been rendered, and no appeal has been filed, or all appeals filed have been decided. *See* TBMP § 510.02(b). Despite Petitioner's argument regarding the short time required to render a decision on the pending motion to dismiss, that may not be the end of the matter.

Accordingly, respondent's motion is granted and proceedings are suspended pending final disposition of the civil action.

Within twenty days after the final determination of the civil action, the parties shall so notify the Board so that this proceeding may be called up for appropriate action. Such notification to the Board should include a copy of any final order or final judgment which issued in the civil action.

During the suspension period, the parties must notify the Board of any address changes for the parties or their attorneys. In addition, the parties are to promptly inform the Board of any other related cases, even if they become aware of such cases during the suspension period. Upon resumption, if appropriate, the Board may consolidate related Board cases.

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