

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Mailed: May 18, 2016

Cancellation No. 92063225

*United States Department of the
Interior, National Park Service*

v.

DNC Parks & Resorts at Yosemite, Inc.

Wendy Boldt Cohen, Interlocutory Attorney:

On March 14, 2016, Respondent (“DNC”) filed a motion to suspend this proceeding pending final determination of a civil action filed in the United States Court of Federal Claims, styled, *DNC Parks & Resorts at Yosemite, Inc. v. The United States of America*,¹ Case No. 15-cv-1034-PEC filed January 25, 2016.² The motion has been fully briefed.³ The Board has considered the parties’ submissions and presumes the parties’ familiarity with the factual bases for the motion and does not recount them here except as necessary to explain the Board’s order.

¹ Petitioner, the United States Department of the Interior, National Park Service (“NPS”), is alleged by both parties to be a party to the contract in dispute in the civil action.

² This Board proceeding was filed by Petitioner on February 26, 2016, after commencement of the civil action.

³ Petitioner’s notice of appearance filed April 22, 2016 is noted and made of record.

It is the policy of the Board to suspend proceedings in a pending case when the parties are involved in a civil action, which action may be dispositive of or have a bearing on the Board case. *See* Trademark Rule 2.117(a). The civil action involves the same parties and the same marks at issue in this proceeding. The civil action involves claims by DNC regarding an alleged breach of contract by NPS and seeks to establish the fair market value of registered trademarks at issue in this Board proceeding. As alleged by the parties, the contract in dispute in the civil action, provides, in pertinent part, that:

- (i) [DNC will] sell and transfer to the successor designated by the Secretary its POSSESSORY INTEREST in CONCESSIONER and GOVERNMENT IMPROVEMENTS, if any, as defined under the contract, and all other property of [DNC] used or held for use in connection with such operations; and
- (ii) the Secretary will require such successor, as a condition to the granting of a contract to operate, to purchase from [DNC] such POSSESSORY INTEREST, if any, and such other property, and to pay [DNC] the fair value thereof.

6 TTABVue at ¶ 22 and 9 TTABVue at ¶¶ 166 - 67.⁴

In considering the contract alleged to have been breached and whether it has been breached, the court may consider and even reach a determination of ownership rights in the marks at issue. In view thereof, the civil action may be dispositive of or have a bearing on this proceeding.

Accordingly, Respondent's motion to suspend for the civil action is **granted**.

This proceeding is suspended pending final disposition of the civil action

⁴ The parties both alleged that Section 13 of the contract and specifically the definition of "other property" involves the marks at issue in this Board proceeding.

between the parties, and in view of this suspension, any pending motions are denied without prejudice.

Within **twenty days** after the final determination of the civil action, the parties shall so notify the Board in writing, and provide with such notice a copy of the court's final order.

If a party believes any motion pending at the time of suspension and denied by this order was not resolved or made moot by the determination of the civil action, the party may renew the motion by citing its title, date of filing, and docket entry in the Board's electronic proceeding file. Any motion renewed must be accompanied by a signed statement that the motion has been reviewed in its entirety and concerns matters still disputed between the parties.

If the renewed motion was contested at the time of suspension and the non-moving party believes that its original response requires supplementation in view of events since suspension, the non-moving party has fifteen days from the date of service of the renewal of the motion to file a supplemental response.

During the suspension period, the parties shall notify the Board of any address changes for the parties or their attorneys.