

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

VERILUX, INC.)	Serial No. 76/396,211
)	
Opposer,)	Opposition No. 91156531
)	
v.)	Mark: INDOOR SUNSHINE
)	
LINAYA GAIL HAHN,)	Published in Official
)	Gazette January 14, 2003
Applicant.)	

**APPLICANT'S RESPONSE TO OPPOSER'S
MOTION TO SUSPEND PROCEEDING**

Linaya Gail Hahn ("Applicant"), by her attorney, respectfully requests that Opposer's Motion to Suspend Proceeding be denied.

Verilux, Inc. ("Opposer") moved pursuant to Trademark Rule 2.117(a) to suspend the Opposition proceeding due to the filing of Opposer's civil action against Applicant. However, Opposer's motion is merely an attempt to remedy the mistakes of counsel in the opposition proceedings which resulted in the dismissal of the opposition, and is an abuse of the judicial process. Opposer's Motion to Suspend Proceeding should be denied by the Board.

Opposer filed its opposition of Applicant's mark on June 6, 2003. This opposition claimed confusion based on Applicant's use of the work "sunshine" which was also contained in Opposer's family of marks. However, as Opposer was not entitled to the exclusive use of the word "sunshine," and Applicant's mark was not otherwise confusing with respect to Opposer's marks, this opposition was meritless. No action was taken nor response given to either the Board or to Applicant for more than one year following the filing of Applicant's Answer to Opposition. On October 6, 2004, Opposer was given a 30-day notice by the Board to show cause for the failure to prosecute, which



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also went unanswered. Opposer's opposition was dismissed with prejudice by the Board on December 21, 2004, for failing to prosecute within the required time. Opposer then filed a Motion for Relief from Final Judgment asking that the Board reinstate the Opposition based on excusable neglect. However, as explained in Applicant's answer to this motion, Opposer's motion established only the inattention and carelessness on the part of its counsel, and set forth no legitimate reasons for relief under the applicable TTAB Manual of Procedure § 544 and Rule 60(b)(1) of the Federal Rules of Civil Procedure. Opposer's actions in the filing and prosecution of its opposition have been questionable, and the filing of a meritless complaint in the United States District Court of Connecticut and this subsequent Motion to Suspend Proceeding further demonstrates the recklessness and abuse in Opposer's use of the judicial process in an attempt to extract an unfair settlement from Applicant.

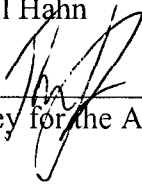
Furthermore, Opposer's motion is moot, as there is no proceeding pending before the TTAB at this time. As of December 21, 2004, the Opposition proceeding had been dismissed with prejudice, and therefore cannot and need not be suspended. Although Opposer has filed a Motion for Relief from this dismissal, the motion, as discussed above, failed to adequately set forth legitimate reasons for relief. The denial of this motion by the Board, therefore sustaining the dismissal, would render Opposer's Motion to Suspend Proceeding moot. *See, e.g. Health Letter Assoc. v. Diabetes Research and Wellness Found., Inc.*, 1999 TTAB LEXIS 640 (T.T.A.B. 1999) (denying respondent's motion for a suspension of the proceeding because the motion had become moot following the dismissal of the counterclaim against opposer's pleaded registration).

Should the Board decide in the alternative, however, that proceedings are currently in progress, Trademark Rule 2.117(b) states that: "Whenever there is pending

before the Board both a motion to suspend and a motion which is potentially dispositive of the case, the potential dispositive motion may be decided before the question is considered, regardless of the order in which the motions were filed.” Because the granting or denial of Opposer’s Motion for Relief from Judgment is a pending dispositive motion, the Board should decide that motion first before considering this Motion to Suspend Proceedings. The ill-timed filing of a Motion to Suspend Proceeding while the previous dispositive motion was still before the Board further demonstrates Opposer’s abuse of the Board’s time and Applicant’s resources in an attempt to remedy mistakes in the prosecution of the Opposition.

For the above reasons, Applicant respectfully requests that the Board deny Opposer’s Motion to Suspend Proceeding.

Respectfully Submitted,
Linaya Gail Hahn

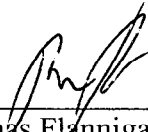
By: 

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that *Applicant's Response to Opposer's Motion to Suspend Proceeding* was served on Opposer, by placing a copy of the same in the U.S. Mail at Three First National Plaza, 70 W. Madison St., Chicago, Illinois, with postage prepaid, before the hour of 5:00 p.m. on February 21, 2005.



Thomas Flannigan