UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: March 23, 2004

Opposition No. 91157392

China Healthways Institute, Inc. dba Chi Institute

v.

Xiaoming Wang

Frances S. Wolfson, Interlocutory Attorney:

On February 14, 2004 (via a certificate of mailing) opposer filed a motion to suspend the proceeding pending final determination of a civil action between the parties.

Applicant opposes the motion on the ground that applicant is not named as a party to the civil action. In the civil action, opposer has alleged that applicant is the president of a party named in the court case, and pleads that it may seek leave to amend the complaint to include applicant as a named party.

Applicant further alleges that applicant's mark is CHI PLUS, whereas the marks named in the civil action as infringing opposer's rights do not include this specific mark. In the complaint, opposer has listed several marks

which it alleges are infringing its own rights; the mark CHI is in the listing and the entire listing is followed by the words “or a term confusingly similar thereto.”

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). The civil action between opposer and applicant's alleged alter ego business concern regarding marks including the word CHI may likely have a bearing on this case.

Accordingly, opposer's motion is hereby granted as well taken; and proceedings herein are suspended pending final disposition of the civil action between the parties.

Concurrently with its motion to suspend, opposer filed a contested motion for a protective order. Opposer seeks to be relieved from answering applicant's first set of interrogatories in view of opposer's pending motion for suspension. Applicant urges the Board not to relieve opposer of its obligation to respond to propounded discovery requests and observes that the motion to suspend was filed the same day opposer's answers were due.

Opposer's motion to suspend this case is considered to apply retroactively to stay opposer's obligation to respond to applicant's first set of interrogatories until

proceedings are resumed. Accordingly, opposer's motion for a protective order is granted. When proceedings are resumed, opposer will be allowed a brief period of additional time to respond to the interrogatories.

Within twenty days after the final determination of the civil action, the interested party should notify the Board so that this case may be called up for appropriate action. During the suspension period the Board should be notified of any address changes for the parties or their attorneys.

New Developments at the Trademark Trial and Appeal Board

- Files of TTAB proceedings can now be examined using TTAB Vue, accessible at http://ttabvue.uspto.gov. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format. Papers filed prior to January 2003 may not have been scanned. Unscanned papers remain available for public access at the TTAB. For further information on file access, call the TTAB at (703) 308-9330.

- Parties should also be aware of recent changes in the rules affecting trademark matters, including the rules of practice before the TTAB. *See* Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) (www.uspto.gov/web/offices/com/sol/notices/68fr55748.pdf); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003) (www.uspto.gov/web/offices/com/sol/notices/68fr48286.pdf).

- The second edition (June 2003) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at www.uspto.gov/web/offices/dcom/ttab/tbmp/.