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

Proceeding	91194504
Party	Plaintiff Sutherland Centennial Lumber Co. LLC, Sutherland Building Materials Centers LP, and Sutherlands West Texas, Inc.
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Attachments	632_003 Opposition to Motion to Suspend 7-5-12.pdf (4 pages)(29141 bytes)

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SUTHERLAND CENTENNIAL LUMBER)	
CO. LLC, SUTHERLAND BUILDING)	
MATERIALS CENTERS, LP, and)	
SUTHERLANDS WEST TEXAS, INC.)	
)	
Opposers,)	
)	
v.)	Opposition No. 91194504
)	Application Serial No. 77/784,368
CIMARRON LUMBER AND SUPPLY)	Mark: SUTHERLAND LUMBER
COMPANY)	COMPANY
)	
Applicant.)	

OPPOSERS’ MEMORANDUM IN OPPOSITION TO
APPLICANT’S MOTION TO SUSPEND

Sutherland Centennial Lumber Co. LLC, Sutherland Building Materials Centers, LP and Sutherlands West Texas, Inc. (collectively “Opposers”) oppose the request by Applicant Cimarron Lumber and Supply Company (hereinafter "Applicant") that the Board suspend the proceedings in the above-captioned matter pending the disposition of the matter *Cimarron Lumber and Supply Company v. McLiney Lumber and Supply, LLC, Sutherland Building Material Centers, L.P., Sutherlands West Texas, Inc., and Sutherland Centennial Lumber Co., LLC*, Civil Action No. 2:12-CV-02240-JAR-KMH, currently pending before the United States District Court for the District of Kansas (hereinafter the “Civil Action”).

The Board has discretion to deny the pending request to suspend. “Suspension of a Board proceeding pending the final determination of another proceeding is solely within the discretion of the Board; the court in which a civil action is pending has no power to suspend proceedings in a case before the Board.” TBMP § 510.02(a)

Although the Civil Action includes counts not available for disposition in this forum, all hinge to some degree on trademark rights to which a determination by the Board in the present proceeding would be instructive. In addition, no count in the Civil Action (attached as Exhibit 1 to the Applicant's Motion to Suspend) is made for relief pertaining to this proceeding and a decision by the District Court will, therefore, not be directly determinative. Further, this proceeding has been pending for over two years and would likely be resolved prior to any final determination by the District Court, and likely prior to the District Court case even going to trial. Continuing this proceeding will allow the parties to reach a final disposition before the Board as to the pending application, provide a decision from the Board for consideration by the District Court, and likely allow the parties to resolve among themselves at least some of the claims raised in the Civil Action.

In the case cited in the Applicant's Motion to Suspend, and also referenced in the above-noted TBMP section, *New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 USPQ2d 1550, 1551 (TTAB 2011) the Board did acknowledge that a suspension may be warranted, even if the civil action is not dispositive of the Board proceeding but still has a bearing on the issues before the Board. However, the Board also made clear, just prior to giving the order to suspend, that each party to the proceedings had moved to suspend pending disposition of the civil action. *See id.* at 1552. In the present proceeding, the Motion to Suspend is contested.

In addition to the above factors, the Opposers note that if the opposition is allowed to proceed, either party may still request a suspension should developments in either the civil action or the opposition proceeding warrant.

For above reasons, the Opposers request that the Board deny the pending Motion to Suspend and, in the alternative, grant a 90 day extension for discovery including consequent resetting of trial dates.

Respectfully submitted,

Erickson, Kernell, Derousseau
& Kleypas, LLC

Dated: July 5, 2012

By: /Sean T. Bradley/
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Sutherlands West Texas, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSERS' MEMORANDUM IN OPPOSITION TO APPLICANT'S MOTION TO SUSPEND, which was filed electronically with the Trademark Trial and Appeal Board, has been served upon Applicant's attorney Scott R. Brown of Hovey Williams LLP, 10801 Mastin Blvd., Suite 1000, Overland Park, Kansas 662210, by U.S. Mail this 5th day of July, 2012.

/Sean T. Bradley/