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Filing date: **02/29/2012**

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

Proceeding	91203708
Party	Defendant Fiber Composites, LLC
Correspondence Address	DEBRA S. SEROTA FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022 tmdoctc@fr.com
Submission	Motion to Suspend for Civil Action
Filer's Name	John M. Nading
Filer's e-mail	Tamar.Duvdevani@dlapiper.com, John.Nading@dlapiper.com, David.Huff@dlapiper.com
Signature	/John M. Nading/
Date	02/29/2012
Attachments	Cambridge v Fiber - Applicant Mot to Susp Proceed Disp of Fed Lit - Opp No 91203708.pdf (20 pages)(463879 bytes)

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

In the matter of Trademark
Application Serial No. 85/142,604
Mark: ARMORGUARD
Filing Date: September 30, 2010
Publication date: January 10, 2012

CAMBRIDGE PAVERS, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91203708
)	
FIBER COMPOSITES, LLC,)	
)	
Applicant.)	
)	

**APPLICANT’S MOTION TO SUSPEND PROCEEDING PENDING
DISPOSITION OF FEDERAL LITIGATION AND MEMORANDUM IN SUPPORT**

Applicant Fiber Composites, LLC (hereinafter “Applicant”), by and through the undersigned counsel, files this Motion to Suspend Proceeding Pending Disposition of Federal Litigation and Memorandum in Support, pursuant to 37 C.F.R. § 2.117(a) and TBMP § 510.02(a). For the reasons set out below, Opposer Cambridge Pavers, Inc.’s (hereinafter “Opposer”) Notice of Opposition, which was filed February 7, 2012, should be suspended pending the outcome of a prior pending federal district court action.¹

ARGUMENT

This Opposition Proceeding should be suspended pending the outcome of a federal district court action for trademark infringement, false designation of origin, dilution, and unfair

¹ While the Trademark Trial and Appeal Board (“Board”) considers this Motion, Applicant respectfully requests that the Board suspend this Opposition Proceeding “with respect to all matters not germane to the motion” pursuant to 37 C.F.R. § 2.127(d).

competition between these same parties and involving the identical claim in the United States District Court for the District of New Jersey, Case No. 2:11-CV-05543 (WJM)(MF) (hereinafter “federal litigation” or “federal court action”) (*see* true and correct copy of Opposer’s Complaint, attached hereto as Exhibit A). Opposer, as Plaintiff, filed the federal court action on September 23, 2011 against Applicant, as Defendant, and Homer TLC, Inc. Opposer then filed the Notice of Opposition on February 7, 2012.

“To the extent that a civil action in a [f]ederal district court involves issues in common with those in a proceeding before the Board, the decision of the [f]ederal district court is often binding upon the Board.” TBMP § 510.02(a). “[W]hile a decision by the District Court would be binding upon the [United States Patent and Trademark Office (“USPTO”)], a decision by the [Board] would only be advisory in respect to the disposition of the case pending in the District Court.” *Tokaido v. Honda Assocs. Inc.*, 179 U.S.P.Q. 861, 862 (T.T.A.B. 1973) (“[N]otwithstanding the fact that the [USPTO] proceeding was the first to be filed, it is deemed to be the better policy to suspend proceedings herein until the civil suit has been finally concluded”) (citations omitted). *See also Whopper-Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. 805, 807 (1971) (“The duty of this Court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.”) (quotation omitted). “The only question for determination . . . is whether the outcome of the civil action will have a bearing on the issues involved in the opposition proceeding.” *Other Tel. Co. v. Conn. Nat’l Tel. Co., Inc.*, 181 U.S.P.Q. 125, 126 (T.T.A.B. 1974), *petition denied*, 181 U.S.P.Q. 779 (Comm’r 1974). Here, the federal court action has been ongoing for five months and the final determination of that

federal court action will have a bearing on the issues before the Board because both proceedings are between the same parties and involve the same claims.

Specifically, both the Notice of Opposition and the federal litigation involve Applicant's ARMORGUARD Mark, as depicted in Application Serial No. 85142604, and Opposer's ARMORTEC Mark, as depicted in stylized font & design in Registration Nos. 3094763 and 3105701. In the Notice of Opposition, Opposer asserts that Applicant's ARMORGUARD Mark should be refused registration because of an alleged likelihood of confusion with Opposer's ARMORTEC Mark. Likewise, in the federal action, the basis for Opposer's claims for relief is an alleged likelihood of confusion between Applicant's ARMORGUARD Mark and Opposer's ARMORTEC Mark. *See* Exhibit A, pp. 4-7. Indeed, Opposer specifically identifies Applicant's Application Serial No. 85142604 for the ARMORGUARD Mark, as well as Opposer's Registration Nos. 3094763 and 3105701 in the Complaint in the federal litigation. *See* Exhibit A, Paras. 8, 12, and 17.

There can be no doubt then that the final resolution of the federal litigation will be dispositive of the issues in this Opposition Proceeding. To proceed further with a claim in this forum would waste the resources of this agency, while the federal court is considering identical evidence and arguments on the exact same claim. For all these reasons, the Notice of Opposition should be suspended pending the outcome of the federal court action.

CONCLUSION

For the reasons set forth herein, Applicant respectfully submits that it has established good cause for the suspension of this Opposition Proceeding and requests the granting of its Motion to Suspend Proceeding Pending Disposition of Federal Litigation.

Dated: February 29, 2012

Respectfully submitted,

DLA PIPER LLP (US)

/s/ John M. Nading

By: Tamar Y. Duvdevani
John M. Nading
500 8th Street, NW
Washington, DC 20004
Tel. (202) 799-4157
Fax (202) 799-5157

*Attorneys for Applicant
Fiber Composites, LLC*

EXHIBIT A

**Lawrence D. Mandel
Gertner, Mandel & Peslak, LLC
P.O. Box 499
Lakewood, New Jersey 08701
(732) 363-3333
Fax (732) 363-3345
Attorneys for Plaintiff**

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CAMBRIDGE PAVERS, INC.	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO. _____
v.	:	
	:	COMPLAINT AND JURY DEMAND
FIBER COMPOSITES, LLC and HOMER TLC, INC.,	:	
	:	
Defendants.	:	

CAMBRIDGE PAVERS, INC. by its attorneys, Gertner, Mandel & Peslak, LLC, for its complaint against, FIBER COMPOSITES, LLC and HOMER TLC, INC hereby alleges as follows:

1. Plaintiff, CAMBRIDGE PAVERS, INC., ("Cambridge") is a New Jersey corporation having a business address at Base of Jerome Avenue, Lyndhurst, New Jersey 07071.
2. Upon information and belief, Defendant FIBER COMPOSITES, LLC, ("Fiber") is a Delaware Limited Liability Company with an address at 34570 Random Drive, New London, North Carolina 28127.

3. Upon information and belief, Defendant HOMER TLC, INC., ("Homer") is a Delaware corporation with a registered agent address at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

JURISDICTION AND VENUE

4. This is a Civil Action arising under the Federal Trademark Act of 1947, as amended, 15 U.S.C. § 1051, *et. seq.*, the common law of the State of New Jersey, the New Jersey Unfair Competition Act, N.J.S.A. § 56:4-1, *et. seq.*, and the New Jersey Trademark Act, N.J.S.A. § 56:3-13.1a, *et. seq.* This Court has subject matter jurisdiction under the provisions of 15 U.S.C. § 1121, 28 U.S.C. § 1331 and 28 U.S.C. § 1367. Defendants are transacting and doing business within this judicial district; have contracted to supply goods and/or services into this judicial district; regularly do or solicit business or engage in a persistent course of conduct or derive substantial revenue from goods and/or services used or consumed within this judicial district and derive substantial revenue from interstate commerce; and are subject to the jurisdiction of this Court, pursuant to the laws of this State and Rule 4 of the Federal Rules of Civil Procedure. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

FACTS COMMON TO ALL CAUSES OF ACTION

5. Plaintiff is a leading manufacturer of paving stones in the United States.
6. Plaintiff has used the mark ARMORTEC since at least as early as 1995 to distinguish its goods, namely "paving stones with a hardfacing top surface."
7. Through its extensive sales and advertising, Plaintiff has developed extensive good will throughout the United States with respect to the mark ARMORTEC.
8. Plaintiff is the owner of U.S. Trademark Registration No. 3,094,763.

9. Plaintiff's U.S. Trademark Registration for ARMORTEC is valid, subsisting and incontestable.

10. Plaintiff's ARMORTEC trademark is used in conjunction with what is promoted as its "advanced technology" which protects the colors of the paving stones against fading and keeps the surface smooth, yet skid resistant.

11. Plaintiff's ARMORTEC products are promoted under the slogan: "They'll Look Like New Forever."

12. Plaintiff is the owner of U.S. Trademark Registration No. 3,105,701 for the mark "THEY'LL LOOK LIKE NEW FOREVER." CAMBRIDGE PAVING STONES WITH ARMORTEC & Design, which Trademark Registration is valid, subsisting and incontestable.

13. Defendant, Fiber, markets and sells composite decking with protection.

14. Fiber is selling composite decking with protection with the mark ARMORGUARD exclusively through Home Depot stores owned by defendant Homer and has filed a Federal trademark application for the mark ARMORGUARD.

15. To promote the sale of Fiber's composite decking with protections, Defendants have distributed materials which promote ARMORGUARD composite decking with protection which is "warranted against staining and fading."

16. Defendants' ARMORGUARD trademark is used to promote an outdoor living surface having a protective surface that maintains its color, and is able to withstand most common weather conditions and everyday wear and tear.

17. Defendant Fiber has applied to register the mark, ARMORGUARD for “composite decking composed of non-metal materials” under U.S. Trademark Application Serial No. 85/142,604.

18. Outdoor decking materials compete directly with pavers for consumers in the market to improve and expand their outdoor living space.

19. Defendants have acted with full knowledge of Plaintiff's rights.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT

20. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 19 hereof with the same force and affect as if set forth herein at length.

21. The conduct of Defendants as alleged herein with regard to ARMORGUARD constitutes infringement of Plaintiff's registered trademark ARMORTEC.

22. Defendants' unauthorized activities and infringement are likely to cause confusion or to cause mistake or to deceive the consuming public as to the true source of the goods sold by Defendants.

23. Defendants have full knowledge of Plaintiff's exclusive and long established proprietary rights in and to the trademark but continue to proceed in complete disregard thereof.

24. The activities and conduct of Defendants as alleged herein have damaged Plaintiff and will, unless restrained, further impair the value of Plaintiff's trademark and the valuable good will which has been built up in the trademark, and Plaintiff has no adequate remedy at law.

COUNT II
FALSE DESIGNATION OF ORIGIN

25. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 24 hereof with the same force and affect as if set forth herein at length.

26. Defendant's unauthorized use of ARMORGUARD tends to falsely represent that Defendants are connected with or that Defendants' activities are authorized by Plaintiff and is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendants with Plaintiff, or as to the origin, sponsorship, or approval of Defendants' goods or commercial activities by Plaintiff. Any failure of Defendants to maintain acceptable standards of quality and service will reflect adversely on Plaintiff and cause irreparable harm to Plaintiff.

27. Plaintiff has no control over the quality of the goods sold by Defendants, and because of the confusion as to the source engendered by Defendants, Plaintiff's valuable good will in respect of its trademark is at the mercy of Defendants.

28. Said actions of Defendants constitute a violation of 15 U.S.C. § 1125(a) in that such false designations and representations of origin and quality have been and continue to be used on or in connection with goods sold by Defendants or which affect commerce.

29. Defendants' false designation of origin and quality has caused substantial and irreparable damage and injury to Plaintiff, for which Plaintiff has no adequate remedy at law.

COUNT III
DILUTION

30. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 29 hereof with the same force and affect as if set forth herein at length.

31. Defendants' actions constitute a violation of 15 U.S.C. § 1125(c) in that such use of ARMORGUARD has caused and will continue to cause dilution of the distinctive quality of Plaintiff's mark ARMORTEC.

COUNT IV
COMMON LAW UNFAIR COMPETITION

32. This count arises under the New Jersey common law of Unfair Competition. Jurisdiction is supplemental to Count I pursuant to U.S.C. § 1367. Venue is proper in this district under 28 U.S.C. § 1391.

33. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 32 hereof with the same force and affect as if set forth herein at length.

34. By Defendants' unauthorized use of ARMORGUARD, Defendants are guilty of unfair competition in violation of the New Jersey Common Law of Unfair Competition and are likely to cause confusion, mistake or to deceive the public.

35. Defendants' unlawful conduct will continue to damage Plaintiff unless enjoined by this court. Plaintiff has no adequate remedy at law.

COUNT V
NEW JERSEY STATUTORY UNFAIR COMPETITION

36. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 35 hereof with the same force and affect as if set forth herein at length.

37. Defendants' unauthorized use of ARMORGUARD in connection with their sales and marketing of goods constitutes appropriation of Plaintiff's trademark, reputation and good will in direct violation of the New Jersey Unfair Competition Act, N.J.S.A. § 56:4-1.

38. The activities of Defendants alleged herein have caused and, if not enjoined, will continue to cause, irreparable harm to the rights of Plaintiff. Plaintiff has no adequate remedy at law.

COUNT VI
NEW JERSEY TRADEMARK ACT

39. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 38 hereof with the same force and affect as if set forth herein at length.

40. Defendant's unauthorized use of ARMORGUARD in connection with their sales and marketing of goods constitutes appropriation of Plaintiff's trademark, in direct violation of the New Jersey Trademark Act, N.J.S.A. § 56:3-13.16.

41. The activities of Defendants alleged herein have caused and, if not enjoined, will continue to cause, irreparable harm to the rights of Plaintiff. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays for judgment that:

(a) Defendants have, by their unauthorized use of a mark confusingly similar to Plaintiff's trademarks, infringed the trademarks, used and applied false designations of origin, diluted the distinctive quality of Plaintiff's trademarks, competed unfairly with Plaintiff and have injured Plaintiff's good will and business reputation, in violation of Federal and State Law and have done so willfully all to the detriment of Plaintiff.

(b) Defendants, their agents, servants, employees, successors and assigns and all persons in active concert, privity, or participation with Defendants, be preliminarily and permanently enjoined from infringing upon the Federally registered trademark of Plaintiff, from using any false designation or false description or representation, from engaging in any act or

series of acts which either alone or in combination constitutes deceptive or unfair methods of competition by Defendants with Plaintiff and from otherwise interfering with or injuring the business reputation of Plaintiff, or diluting the distinctive quality of the Plaintiff's trademarks or the good will associated therewith.

(c) Defendants be required to account for and pay over to Plaintiff, Defendants' profits and any damages suffered by Plaintiff as a result of Defendants' acts of trademark infringement, false designation of origin, and unfair competition, together with interest and costs.

(d) Defendants be required to pay to Plaintiff an amount three times the profits of Defendants or damages of Plaintiff.

(e) Defendants be required to pay an award of statutory damages to Plaintiff.

(f) Defendants be required to cease all use of the mark ARMORGAURD or any mark confusingly similar to Plaintiff's trademarks.

(g) Defendants be ordered to surrender for destruction all products, signs, labels, advertisements and other materials constituting infringement of Plaintiff's trademarks.

(h) Defendants be required to pay Plaintiff the costs of this action, together with reasonable attorney's fees, costs and disbursements.

(i) Plaintiff be awarded such other and further relief, as this Court deems just and equitable.

DEMAND FOR TRIAL BY JURY

Plaintiff demands trial by jury on all issues so triable in this matter.

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

Pursuant to Local Civil Rule 11.2, it is stated that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration or administrative proceeding to the best of our knowledge or belief. Also, to the best of our knowledge or belief, no other action, administrative proceeding or arbitration is contemplated.

GERTNER, MANDEL & PESLAK, LLC

Dated: September 23, 2011

By: 

Lawrence D. Mandel
P.O. Box 499
Lakewood, NJ 08701
(732) 36303333
Attorneys for Plaintiff

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of New Jersey

CAMBRIDGE PAVERS, INC.

Plaintiff

v.

FIBER COMPOSITES, LLC and HOMER TLC, INC.

Defendant

)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) FIBER COMPOSITES, LLC
345770 Random Drive
New London, NC 28127

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,

whose name and address are: Lawrence D. Mandel
Gertner, Mandel & Peslak, LLC
P.O. Box 499
Lakewood, NJ 08701

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Fiber Composites, LLC
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of New Jersey

CAMBRIDGE PAVERS, INC.

Plaintiff

v.

FIBER COMPOSITES, LLC and HOMER TLC, INC.

Defendant

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)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* HOMER TLC, INC.
c/o Corporation Service Company
2711 Centerville Rd., Suite 400
Wilmington, DE 19808

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lawrence D. Mandel
Gertner, Mandel & Peslak, LLC
P.O. Box 499
Lakewood, NJ 08701

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Homer TLC, Inc.
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS Cambridge Pavers, Inc.</p> <p>(b) County of Residence of First Listed Plaintiff <u>Bergen</u></p> <p>(c) Attorney's (Firm Name, Address, Telephone Number and Email Address) Lawrence D. Mandel, Esq. Gertner, Mandel & Peslak P.O. Box 499 Lakewood, NJ 08701</p>	<p>DEFENDANTS Fiber Composites, LLC and Homer TLC, Inc.</p> <p>County of Residence of First Listed Defendant <u>Out of State</u></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td>Citizen of This State</td> <td>PTF <input type="checkbox"/> 1</td> <td>DEF <input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td>PTF <input type="checkbox"/> 4</td> <td>DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Annuity <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<p>PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			<p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C Section 1051

Brief description of cause:
Trademark Infringement

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) (See instructions): JUDGE _____ DOCKET NUMBER _____

Explanation:
9/23/2011

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **APPLICANT'S MOTION TO SUSPEND PROCEEDING PENDING DISPOSITION OF FEDERAL LITIGATION AND MEMORANDUM IN SUPPORT** was served via U.S. First Class mail, postage prepaid, and properly addressed to Opposer's counsel of record:

Lawrence D. Mandel
Gertner Mandel & Peslak, LLC
Post Office Box 499
Lakewood, NJ 08701

this 29th day of February, 2012.

/s/ John M. Nading
John M. Nading
Attorney for Applicant