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

Proceeding	91211332
Party	Plaintiff Keep Rockin', LLC
Correspondence Address	Robert C. Cumbow; Kellen A. Hade Graham & Dunn PC 2801 ALASKAN WAY, SUITE 300 - PIER 70 SEATTLE, WA 98121-1128 UNITED STATES ip@grahamdunn.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Jeffrey A. Nelson
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Signature	/jan/
Date	12/18/2013
Attachments	Consent Motion to Suspend for Civil Action.pdf(49160 bytes ) Exhibit 1.pdf(377647 bytes )

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

Keep Rockin', LLC,

Opposer,

v.

Pizza Rock, LLC,

Applicant.

Opposition No. 91211332

**CONSENTED MOTION TO SUSPEND PROCEEDINGS PENDING  
DISPOSITION OF DISTRICT COURT ACTION**

Pursuant to 37 CFR § 2.117(a), TBMP § 510.02(a), Opposer, through its undersigned counsel, and with consent of Applicant, hereby moves the Board to suspend the above-referenced opposition proceeding (the "Opposition") pending final disposition of federal district court case No. 2:13-cv-02205 filed November 27, 2013, in federal district court for the District of Nevada. Copies of the complaint (the "Complaint") and civil cover sheet are attached as Exhibit 1.

The Complaint seeks, among other things, (a) a judgment that Applicant's use and registration of the PIZZA ROCK mark for restaurant services infringes upon Opposer's rights in its THE ROCK mark in violation of 15 USC § 1114(a) and common law, constitutes unfair competition in violation of 15 USC § 1125(a) and common law, and (2) an injunction against Applicant's use of the PIZZA ROCK mark for restaurant services.


When the parties are involved in court proceedings concerning the same marks and issues, the "standard procedure" of the Board is to suspend its administrative proceedings pending the outcome of the civil litigation. *See New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 USPQ2d 1550, 1552 (TTAB 2011). The Board has held that the civil action need not even be dispositive of the Board proceeding to warrant suspension. Rather, it is sufficient that the civil

action have bearing on the issues before the Board to justify a suspension. *New Orleans Louisiana Saints*, 99 USPQ2d at 1552.

Here, the Complaint involves the same parties, the same marks, and the same restaurant services as those at issue in the Opposition. Thus, the outcome of the Complaint will have significant bearing on the Opposition. Accordingly, suspension of the Opposition pending the outcome of the civil litigation between the parties is warranted. *See, e.g., Other Telephone Co. v. Connecticut National Telephone Co.*, 181 USPQ 125 (TTAB 1974) (decision in civil action for infringement and unfair competition would have bearing on outcome of Section 2(d) claim before Board), *petition denied*, 181 USPQ 779 (Comm'r 1974).

For these reasons, the parties submit that suspension of the Opposition is appropriate. The same is respectfully requested.


December 18, 2013.

By  \_\_\_\_\_  
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Attorneys for Opposer

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document has been served upon counsel for Applicant via email as agreed between the parties on December 18, 2013.

 \_\_\_\_\_  
Jeffrey A. Nelson

## **CERTIFICATE OF ELECTRONIC FILING**

I CERTIFY that on December 18, 2013, the foregoing Consented Motion to Suspend for Civil Action regarding the mark "PIZZA ROCK" (Appl. No. 85/683,315) in Opposition No. 91211332 is being electronically filed:

/sh/

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6 Attorneys for Plaintiff  
Keep Rockin, LLC  
7  
8

9 **UNITED STATES DISTRICT COURT**  
10 **DISTRICT OF NEVADA**

11 KEEP ROCKIN, LLC, a Washington limited  
12 liability company,

13 Plaintiff,

14 v.

15 PIZZA ROCK LV, LLC, a Nevada limited  
16 liability company, and PIZZA ROCK, LLC, a  
California limited liability company,

17 Defendants.

Case No.: 2:13-cv-02205

**COMPLAINT**

**(JURY DEMAND)**

18 For its complaint, Keep Rockin, LLC, alleges the following:

19 **JURISDICTION AND VENUE**

20 1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C.  
21 §§ 1331 and 1338(a), because Plaintiff’s trademark infringement and unfair competition claims  
22 arise under the laws of the United States, specifically, under the Lanham Act, 15 U.S.C. § 1114.  
23 This Court has supplemental jurisdiction over Plaintiff’s common law claims.

24 2. This Court has personal jurisdiction over Defendant Pizza Rock LV, LLC,  
25 because it is a Nevada limited liability company and it conducts business in the State of Nevada  
26 including the operation of a pizza restaurant in Las Vegas, Nevada. This Court has personal  
27 jurisdiction over Defendant Pizza Rock, LLC, a California limited liability company, because,  
28 upon information and belief, it directs the infringing conduct of Defendant Pizza Rock, LV,

1 LLC, in Las Vegas, Nevada.

2 3. Venue is proper in the United States District Court for the District of Nevada  
3 under 28 U.S.C. § 1391(b)(2), because Defendants are engaged in trademark infringement in  
4 this district through the operation of a pizza restaurant. Venue is proper in the unofficial  
5 Southern division of this Court.

6 **PARTIES**

7 4. Plaintiff Keep Rockin', LLC is a Washington limited liability company with its  
8 principal place of business in Sumner, Washington.

9 5. Defendant Pizza Rock LV, LLC, is a Nevada limited liability company with its  
10 principal place of business in Las Vegas, Nevada.

11 6. Defendant Pizza Rock, LLC, is a California limited liability company with its  
12 principal place of business in Sacramento, California.

13 **ALLEGATIONS COMMON TO ALL COUNTS**

14 7. Keep Rockin' is the owner and franchisor of an interstate chain of pizza  
15 restaurants doing business under the trade name and trademark THE ROCK. The first THE  
16 ROCK pizza restaurant was opened in Tacoma, Washington, in 1995. Since that time, the chain  
17 has grown to seventeen (17) locations in Alaska, Colorado, Oregon, and Washington. Keep  
18 Rockin' is expecting to open additional locations in Alaska, California, Texas, and Washington  
19 in the next year and a total of forty (40) new locations by 2020. THE ROCK pizza's success has  
20 earned the company recognition as America's Number One Independently Owned Pizza Chain  
21 by *Pizza Today Magazine*.

22 8. Keep Rockin' has been continuously using THE ROCK mark for pizza  
23 restaurants since 1999. Keep Rockin' advertises, markets and promotes THE ROCK pizza  
24 restaurants through various media, including maintenance of a website at <TheRockWFP.com>.

25 9. Keep Rockin' owns several United States trademark registrations for THE ROCK  
26 mark for restaurant services, including: (a) THE ROCK word mark for restaurant services in  
27 International Class 43 (U.S. Reg. No. 3095500); (b) THE ROCK and design mark (shown  
28 below) for restaurant and bar services in International Class 43 (U.S. Reg. No. 3910910); and (c)

1 THE ROCK WOOD FIRED PIZZA AND BREWERY for restaurant services in International  
2 Class 43 (U.S. Reg. No. 2628701) (collectively, “THE ROCK Marks”). Keep Rockin’s  
3 registration for THE ROCK word mark is incontestable.



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9 10. In addition, Keep Rockin’ owns a United States trademark registration (Reg. No.  
10 3581930) for the distinctive trade dress of its restaurants, which combine rock and roll  
11 paraphernalia and concert tour memorabilia with metal and flame imagery.

12 11. Based on its federal trademark registrations and common law rights, Keep  
13 Rockin’ owns the exclusive right to use THE ROCK Marks and the associated trade dress for  
14 pizza restaurants. Keep Rockin’ has the right to stop others from using the same or confusingly  
15 similar marks for the same or related services in the United States.

16 12. In 2012, Keep Rockin’ learned of a “Pizza Rock” restaurant that opened  
17 Sacramento, California. The PIZZA ROCK and THE ROCK word marks are nearly identical in  
18 that the dominant term of both marks is the word “ROCK”. The term “pizza” is generic for the  
19 pizza restaurants and, therefore does not serve to distinguish the PIZZA ROCK mark from THE  
20 ROCK word mark.

21 13. Both parties use their mark with a flames motif as shown on the main exterior  
22 signs of the parties’ respective locations as shown below:



1           14.     In addition, the parties offer similar services, namely, high-end pizza restaurants.  
2 Based on these and other factors, consumers are likely to be confused as the source or origin of  
3 their parties' services.

4           15.     Accordingly, on May 16, 2012, counsel for Keep Rockin' sent a cease and desist  
5 letter to Defendant Pizza Rock demanding that it cease use of the PIZZA ROCK mark and any  
6 combination of branding imagery confusingly similar to Keep Rockin's protected trade dress.

7           16.     On May 28, 2012, Pizza Rock, through counsel, summarily denied Keep  
8 Rockin's allegations and refused to comply with Keep Rockin's demands.

9           17.     On May 30, 2012, Keep Rockin's counsel sent a follow-up demand letter and  
10 explained that Keep Rockin' had already received inquiries from two persons regarding an  
11 association between THE ROCK pizza restaurant and PIZZA ROCK restaurant.

12           18.     On July 11, 2012, , through new counsel, Pizza Rock again denied Keep Rockin's  
13 allegations.

14           19.     On July 20, 2012, Pizza Rock filed a federal trademark application for the mark  
15 PIZZA ROCK and design (shown below) for bar and restaurant services.



20           20.     On August 6, 2012, Keep Rockin' again responded through counsel and objected  
21 to Pizza Rock's use of the PIZZA ROCK mark and its application to register the PIZZA ROCK  
22 mark in the United States Patent and Trademark Office ("USPTO").

23           21.     On March 13, 2013, Pizza Rock's application for PIZZA ROCK was published  
24 for opposition by the USPTO.

25           22.     On June 28, 2013, Keep Rockin' filed an opposition to registration of the PIZZA  
26 ROCK mark in the Trademark Trial and Appeal Board of the USPTO ("Opposition  
27 Proceeding"). The parties have been litigating the Opposition Proceeding since that time.

28           23.     Keep Rockin' recently learned that, on or about October 17, 2013, Pizza Rock



1 opened a new PIZZA ROCK restaurant on 3<sup>rd</sup> Street in Las Vegas, Nevada.

2  
3 **COUNT I**  
4 **(Trademark Infringement under**  
5 **the Lanham Act, 15 U.S.C. § 1114(a))**

6 24. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set  
7 forth herein.

8 25. Defendants' use of the PIZZA ROCK mark constitutes a reproduction, copying,  
9 counterfeit, and colorable imitation of THE ROCK Marks in a manner that is likely to cause  
10 confusion or mistake or is likely to deceive consumers.

11 26. As a direct and proximate result of Defendants' infringement of THE ROCK  
12 Marks, Plaintiff has suffered, and will continue to suffer, monetary loss and irreparable injury to  
13 its business, reputation, and goodwill.

14 **COUNT II**  
15 **(Unfair Competition under**  
16 **the Lanham Act, 15 U.S.C. § 1125(a))**

17 27. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set  
18 forth herein.

19 28. Defendants' use of the PIZZA ROCK mark in commerce constitutes a false  
20 designation of origin which is likely to cause confusion, or to cause mistake, or to deceive as to  
21 the affiliation, connection, or association between Plaintiff and Defendant, or as to the origin,  
22 sponsorship, or approval of Defendants' services by Plaintiff.

23 29. As a direct and proximate result of Defendants' infringement unfair competition,  
24 Plaintiff has suffered, and will continue to suffer, monetary loss and irreparable injury to its  
25 business, reputation, and goodwill.

26 **COUNT III**  
27 **(Common law trademark infringement)**

28 30. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set  
forth herein.

1 31. Defendants’ use of the PIZZA ROCK mark constitutes trademark infringement  
2 under common law.

3 32. As a direct and proximate result of Defendants’ trademark infringement, Plaintiff  
4 has suffered, and will continue to suffer, monetary loss and irreparable injury to its business,  
5 reputation, and goodwill.

6 **COUNT IV**  
7 **(Common law unfair competition)**

8 33. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set  
9 forth herein.

10 34. Defendants’ use of the PIZZA ROCK mark constitutes unfair competition under  
11 common law.

12 35. As a direct and proximate result of Defendants’ unfair competition, Plaintiff has  
13 suffered, and will continue to suffer, monetary loss and irreparable injury to its business,  
14 reputation, and goodwill.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff respectfully prays that the Court grant the following relief:

17 A. A temporary, preliminary, and permanent injunction prohibiting the Defendants and  
18 their respective officers, agents, servants, employees, and/or all other persons acting in concert or  
19 participation with them, from using the PIZZA ROCK mark or any confusingly similar variations  
20 thereof, in connection with pizza restaurants, including, without limitation, at the current locations  
21 in Las Vegas, Nevada, and Sacramento, California.

22 B. An award of compensatory, consequential, statutory, and/or exemplary damages to  
23 Plaintiff in an amount to be determined at trial;

24 C. An award of interest, costs and attorneys’ fees incurred by Plaintiff in prosecuting  
25 this action; and

26 D. All other relief to which Plaintiff is entitled.

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Dated: this 27<sup>th</sup> day of November, 2013.

Respectfully submitted,

LEWIS ROCA ROTHGERBER LLP

By: /s/ Michael J. McCue

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**LEWIS ROCA  
|  
ROTHGERBER**

JS 44 (Rev. 12/07)

**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.)

**I. (a) PLAINTIFFS**

KEEP ROCKIN, LLC, a Washington limited liability company,

(b) County of Residence of First Listed Plaintiff Pierce County, WA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Michael J. McCue, Lewis Roca Rothgerber, 3993 Howard Hughes Pkwy., Ste. 600, Las Vegas, NV 89169 (702) 949-8200

**DEFENDANTS**

PIZZA ROCK LV, LLC, a Nevada limited liability company, and PIZZA ROCK, LLC, a California limited liability company

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | <b>PTF</b>                 | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                 |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <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	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <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 Antitrust <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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <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	<b>LABOR</b> <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	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <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)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			<b>IMMIGRATION</b> <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. § 1114(a)

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) IF ANY**


(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE  
11/27/2013

SIGNATURE OF ATTORNEY OF RECORD



**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_