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Filing date: **01/09/2014**

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

Proceeding	91213841
Party	Defendant 509, Inc.
Correspondence Address	LISA J. DICKINSON DICKINSON LAW FIRM, PLLC 1320 N ATLANTIC ST STE B SPOKANE, WA 99201-2304 lisa@dickinsonlawfirm.com;tom@509films.
Submission	Motion to Suspend for Civil Action
Filer's Name	J. Michael Keyes
Filer's e-mail	TTABlitigationdocket@klgates.com, pltrademarks@klgates.com
Signature	/jmkeyes/
Date	01/09/2014
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of U.S. Trademark Application Serial No.: 85/890,960
Published in the *Official Gazette* on November 05, 2013
Mark: 509

LEVI STRAUSS & CO.,)		
	Opposer,)	
)	OPPOSITION NO. 91213841
v.)		
509, INC.,)		
)		
	Applicant.)	

509, INC., MOTION TO SUSPEND OPPOSITION
PROCEEDING PENDING OUTCOME OF CIVIL ACTION

TO: United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Pursuant to 37 C.F.R § 2.117, Applicant 509, Inc., hereby requests that the above-captioned Opposition proceeding be suspended pending disposition of a civil action in the United States District Court of the Northern District of California, namely, *Levi Strauss v. 509, Inc.*, Case No. C 13-05670 JSC (N.D. Cal.) ("Civil Action").

Applicant applied for a federal registration for the Trademark depicted in Registration No. 85/890,960, which published in the *Official Gazette* on November 05, 2013. Opposer filed its Notice of Opposition on December 05, 2013. Applicant's Answer is due on January 14, 2014.

Opposer filed the Civil Action on December 06, 2013. In its Complaint, Opposer claims, *inter alia*, that Applicant's use of the mark that is the subject of Application No. 85/890,960 infringes and dilutes Opposer's so-called "500 Series Trademarks" and constitutes unfair competition under federal and California law. In particular, Opposer alleges that Applicant's use

of the mark at issue with create a likelihood of consumer confusion. The complaint seeks damages and an injunction prohibiting Applicant from using the mark. A copy of Opposer's complaint is attached to this motion.

The outcome of the Civil Action will have a bearing on or be dispositive of this Opposition proceeding. 37 C.F.R. § 2.117. "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 bearing on the Board case Judicial economy lies in the suspension of Board proceedings because, inter alia, the Board has limited jurisdiction involving the issue of registrability only; the Board decision is advisory to the Court, while a U.S. District Court decision is binding on the parties before this administrative Board." *Black Box Corp. v. Better Box Communication Ltd.*, 2002 1T AB LEXIS 253 (TT AB 2002). The Civil Action is currently pending. The initial case management conference date is April 3, 2014.

Accordingly, Applicant requests that this proceeding be suspended pending disposition of the Civil Action.

Respectfully submitted,

K&L GATES LLP

Dated: January 9, 2014

By: /J. Michael Keyes/
J. Michael Keyes
618 W. Riverside Avenue, Suite 300
Spokane, WA 99201
Tel: 509.624.2100
Fax: 509.456.0146

Attorneys for Applicant
509, Inc.

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing 509, INC., Motion To Suspend Opposition Proceeding Pending Outcome Of Civil Action. is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to

Ryan Bricker
Kilpatrick Townsend & Stockton LLP
Two Embarcadero Center, 8th floor
San Francisco, CA 94111

on January 9, 2014.

/Cari M. Hollabaugh/
Cari M. Hollabaugh, Paralegal