

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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wbc

Mailed: November 14, 2016

Opposition No. 91218634

Grumpy Cat Limited

v.

Grumpy Beverage LLC

Wendy Boldt Cohen, Interlocutory Attorney:

Now before the Board is Applicant's motion (filed August 2, 2016) to suspend proceedings pending disposition of a civil action. 17 TTABVUE. The motion is contested by Opposer.¹

The Board may suspend a proceeding before it whenever it becomes aware that a party to that proceeding is involved in a civil action which may have a bearing on the Board case. *See* Trademark Rule 2.117(a); *Mother's Restaurant Inc. v. Mama's Pizza, Inc.*, 723 F.2d 1566, 221 USPQ 394 (Fed. Cir. 1983) (state court infringement decision gave rise to issue preclusion in Board proceeding); TBMP § 510.02(a) (2016).

Applicant moves to suspend this Board proceeding pending final determination of Civil Action No. 8:15-cv-02063-DOC-DFM, styled *Grumpy Cat Limited v. Grenade Beverage LLC, P. Sandford, N. Sanford, et al.*, in the United States District Court for the Central District of California. Upon review of the pleadings from the civil action,

¹ The Board has considered the parties' submissions and presumes the parties' familiarity with the factual bases for the motion, and does not recount them here except as necessary to explain the Board's order.

the Board determines that the outcome of the civil action may have a bearing on this opposition proceeding. The issues involved in the Board and civil action proceedings involve Applicant's purported use and/or application of GRUMPUCCINO and Opposer's various pleaded GRUMPY CAT marks. 17 TTABVUE 13-20. Because the issues involved in the Board action as well as the state court action involve similar issues, the state court decision may have bearing on this proceeding.² Further, the civil action and the Board action involve the same parties.³ 17 TTABVUE 37 and 58.

As noted, 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. *Id.*; *New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 USPQ2d 1550, 1552 (TTAB 2011). In view of this policy, Applicant's motion to suspend is **granted**. Trademark Rule 2.117(a). Proceedings herein are suspended pending final disposition, including any appeals or remands, of the civil action. Within thirty days after the final determination of the civil action, the parties must so notify the Board so that this proceeding may be called up for appropriate action.⁴ Such notification to the Board should include a copy of any final order or final judgment which issued in the civil action.⁵ During the suspension period, the parties must notify the Board of

² The state court case's involved issues are sufficiently related for the court to render relevant findings of fact to assist the Board in rendering its decision on the matter.

³ The court granted Applicant's motion to intervene in the court action.

⁴ Action might include, if appropriate, consolidation of this proceeding with Cancellation No. 92062088.

⁵ A proceeding is considered to have been finally determined when a decision on the merits of the case (*i.e.*, a dispositive ruling that ends litigation on the merits) has been rendered and no appeal has been filed therefrom or all appeals filed have been decided. *See* TBMP § 510.02(b).

any address changes for the parties or their attorneys. In addition, the parties are to promptly inform the Board of any other related cases, even if they become aware of such cases during the suspension period.