

ESTTA Tracking number: **ESTTA705542**

Filing date: **10/29/2015**

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

Proceeding	91223641
Party	Plaintiff Tinnus Enterprises, LLC
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Date	10/29/2015
Attachments	Tinnus Opp Mtn to Suspend v3.pdf(104955 bytes)

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

IN THE MATTER OF Trademark Application Serial No. 86/568,356
For the mark BALLOON BONANZA;
Published for Opposition on August 4, 2015

TINNUS ENTERPRISES, LLC,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91223641
)	
PROMETHEUS BRANDS, LLC,)	
)	
Applicant.)	
_____)	

**OPPOSER TINNUS ENTERPRISES, LLC’S OPPOSITION TO APPLICANT
PROMETHEUS BRANDS LLC’S MOTION TO SUSPEND PENDING
DISPOSITION OF A FEDERAL DISTRICT COURT PROCEEDING**

Pursuant to 37 C.F.R. § 2.117(a), and §§ 502.03 and 510.02 of the Trademark Trial and Appeal Board Manual of Procedure, Opposer Tinnus Enterprises, LLC (“Opposer” or “Tinnus”) hereby submits its Brief in Response to Applicant’s Motion to Suspend Cancellation Proceedings. For the reasons discussed below, Opposer respectfully requests that Applicant’s Motion be denied and that these proceedings continue as scheduled.

ARGUMENT

1. Applicant Prometheus Brands, LLC (“Applicant” or “Prometheus”) has filed a motion to suspend. The only basis for Applicant’s motion is that ZURU Ltd. and Telebrands Corp. are engaged in litigation regarding trademark infringement in a New Jersey federal district court.

2. In this regard, Applicant has moved for suspension only pursuant to 37 C.F.R. § 2.117(a).
(Applicant's Motion to Suspend, at p. 1 of 3.)
3. However, the law requires that these proceedings may only be suspended pursuant to 37 C.F.R. § 2.117(a) when "a party or parties to a pending case are engaged in a civil action." In other words, the regulation provides that the Trademark Trial and Appeal Board ("TTAB") proceeding must have at least one party present from the civil action in order for the TTAB to have discretion to grant or deny a motion to suspend. 37 C.F.R. § 2.117(a).
4. Here, Applicant's request to suspend the proceedings should be denied pursuant to its own grounds. Indeed, Applicant's motion states that neither Tinnus nor Prometheus are parties to the concurrent New Jersey district court action.¹ (Applicant's Motion to Suspend, at p. 2 of 3, fn. 1.) In fact, Applicant acknowledges that its own request lacks an appropriate statutory basis. (*Id.*) Instead of contending that the parties are the same, Applicant argues that because the trademark is the same, therefore suspension is appropriate. (*Id.*)
5. Moreover, Applicant states in its motion to strike (filed recently on October 13, 2015) that "Telebrands and its CEO [. . .] are not even parties to this opposition [. . .]." (Applicant's Motion to Strike, at p. 2 of 4.) In other words, Applicant takes the position that Telebrands, even as an exclusive licensee of Applicant, is not a party here. Under that reasoning, neither can Opposer (Tinnus) be a party here. Thus, Applicant's position requires that neither ZURU Ltd. or Telebrands Corp. are parties to this proceeding, which

¹ Applicant properly acknowledges that leave to amend the pleadings does not add Opposer as a party. (Applicant's Motion to Suspend, at p. 2 of 3, fn. 1.) Tellingly, Opposer cannot even be served (and has not been served) with service of process at this time in the New Jersey action.

likewise requires that neither Applicant nor Opposer be parties to the New Jersey proceeding.

6. Thus, Applicant's motion ignores the law, as 37 C.F.R. § 2.117(a) requires at least one of the parties from the district court proceeding to be the same in the TTAB proceeding.
7. As Applicant's motion (and its motion to strike) states that neither Applicant nor Opposer are parties to the New Jersey district court action, Applicant's motion should be summarily denied.
8. Therefore, Tinnus respectfully requests that that the Board deny Applicant's motion to suspend.

CONCLUSION

WHEREFORE, Opposer respectfully requests that the Board deny Applicant's Motion to Suspend.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSER TINNUS ENTERPRISES, LLC'S OPPOSITION TO APPLICANT PROMETHEUS BRANDS LLC'S MOTION TO SUSPEND PENDING DISPOSITION OF A FEDERAL DISTRICT COURT PROCEEDING** has been filed electronically through the Electronic System for Trademark Trials and Appeals ("ESTTSA") of the U.S. Patent & Trademark Office, and a true a correct copy has been served upon Applicant by first class mail to Applicant's counsel on 29th day of October 2015 at the following address:

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