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

Proceeding no.	91234074
Party	Plaintiff Southwestern Management, Inc.
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Submission	Motion to Suspend for Civil Action
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 76/577,252
Published in the Official Gazette of January 3, 2017

In the Matter of Application Serial No. 76/577,253
Published in the Official Gazette of December 27, 2016

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SOUTHWESTERN MANAGEMENT, INC.

Opposer,

-vs-

Opposition No. 91234074
Opposition No. 91234075

OCINOMLED, LTD

Applicant.

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**MOTION TO SUSPEND OPPOSITION PROCEEDINGS PENDING THE
FINAL RESOLUTION OF A RELATED, MORE ADVANCED
OPPOSITION AGAINST THE SAME APPLICATIONS**

Opposer, Southwestern Management, Inc. (hereinafter “Opposer”), moves to suspend the instant opposition proceedings pending the final resolution of a related, more advanced opposition against the same two applications. The related opposition

is styled *Emeril's Food of Love Productions, LLC v. Ocinomled, Ltd.*, Opposition No. 91232430 (hereinafter "Related Opposition").

The Related Opposition opposes registration of the applications-at-issue here, Serial No. 76577252 and Serial No. 7657253.¹ The primary basis for the Related Opposition is that Emeril's Food of Love Productions, LLC (hereinafter "Emeril's") has continuously used the trademark "DELMONICO" for its restaurant services prior to the filing dates of the applications-at-issue, which are directed to the trademark "DELMONICO'S" and relate to restaurant services and to steak sauce. The Related Opposition was well underway when the Board suspended the Related Opposition due to federal and later state court litigation involving the trademarks that are the subject of the applications-at-issue. In the Related Opposition, for example, Emeril's filed a motion for partial summary judgment that was fully briefed and awaiting a Board ruling as of the time of suspension.

In the Related Opposition, Emeril's filed a motion on May 21, 2021 to reopen/resume the Related Opposition, which was opposed by Ocinomled, Ltd. (hereinafter "Ocinomled"). On August 21, 2021, the Board denied the motion, ruled that the Related Opposition would continue to be suspended, and ordered, "Within TWENTY (20) DAYS of the final determination of the State Court Action, the

¹ Opposer has filed oppositions against each of the two applications and moved on February 6, 2023 to consolidate its two oppositions.

parties must notify the Board so that appropriate action can be taken herein.” Despite Ocinoled’s knowledge that there was a final determination of the State Court Action many months ago, Ocinoled has not notified the Board of such, and has deliberately defied the Board’s order in the Related Opposition.²

There are two different entities that have filed different oppositions against the same two trademark applications. If one of the entity’s oppositions is successful, then the other entity’s oppositions will become moot. To expend the Board’s resources (and Opposer’s and Ocinoled’s resources) on parallel opposition proceedings, either one of which might result in the applications being denied registration, is wasteful. Since the instant opposition has already been suspended for a few years pending the outcome of the State Court Action, further delay while awaiting a final resolution of the Related Opposition will not impose any extraordinary hardship on Ocinoled, especially since Ocinoled favored the suspensions of oppositions pending resolution of the State Court Action. The Related Opposition is more advanced than the instant opposition, and already

²Opposer has asked Ocinoled’s counsel of record over the last few months whether Ocinoled intended to notify the Board in the Related Opposition regarding the final disposition of the State Court Action, but has not received any response. It is noteworthy that the instant opposition was suspended on the basis of the same State Court Action, yet this opposition was resumed by the Board’s order dated October 25, 2022 without objection by Ocinoled.

includes a motion for partial summary judgment. Therefore, the Related Opposition should be reopened and proceed, while the instant opposition should be suspended.

Opposer has asked Ocinomled's counsel of record whether Ocinomled would consent to, stipulate to, etc. the instant motion, but has received no response.

Pursuant to 37 C.F.R. 2.117 and TBMP 510, the Board may suspend a proceeding when another Board proceeding may have a bearing on that proceeding. The suspension typically lasts until the conclusion of the other Board proceeding. It is indisputable that the Related Opposition, which is further along, may have a great bearing on the instant opposition.

Accordingly, Opposer asks that the Board stay the instant oppositions until the final resolution of the Related Opposition.

Dated: February 7, 2023

Respectfully submitted,
The Law Office of Robert E. Purcell, PLLC

A handwritten signature in black ink, appearing to be 'R. Purcell', written over a horizontal line.

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ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

I certify that on the 7 day of February, 2023 a copy of the foregoing MOTION TO SUSPEND OPPOSITION PROCEEDINGS PENDING THE FINAL RESOLUTION OF A RELATED, MORE ADVANCED OPPOSITION AGAINST THE SAME APPLICATIONS was sent via e-mail and First Class U.S. Mail, to the following:

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/s/Allison Haines
Allison Haines