

ESTTA Tracking number: **ESTTA1134192**

Filing date: **05/17/2021**

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

Proceeding No.	91254524
Filing Party	Plaintiff 34ED, LLC
Other Party	Defendant AlertPoint, LLC
Pending Motion	There is no motion currently pending and no other motion is being filed concurrent with this consent motion.
Attachments	Joint Response Requesting Continued Suspension - 91254524.pdf(127159 bytes) 225 Order Staying Case Given Docketed Appeal.pdf(111138 bytes)

Consent Motion for Suspension in View of Civil Proceeding

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, 34ED, LLC hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

34ED, LLC has secured the express consent of all other parties to this proceeding for the suspension requested herein.

Certificate of Service

The undersigned hereby certifies that a copy of this submission has been served upon all parties, at their address of record by Email on this date.

Respectfully submitted,
/michael j. powell/
Michael J. Powell
mjp@navigatingip.com, info@navigatingip.com
05/17/2021

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

34ED, LLC,)	
)	
Opposer)	
)	
v.)	Opp. No. 91254524
)	
ALERTPOINT, LLC,)	(Serial No. 88/255756)
)	
Applicant)	
)	
_____)	

JOINT RESPONSE REQUESTING CONTINUED SUSPENSION
IN VIEW OF CIVIL ACTION

The Opposer, 34ED, LLC, with the express consent of the Applicant, AlertPoint, LLC, hereby submits this joint response to the Board’s Order (the “Order”) issued on April 21, 2021 as follows:

The Order allowed the parties 30 days to inform the Board of the status of the civil action which occasioned the suspension of this proceeding and to provide a copy of the pleadings in the civil action. The status of the civil action is that a final determination of the civil action has not been reached. Attached is a copy of an order recently entered by Judge Ross of the United States District Court for the Northern District of Georgia in the case of *34ED, LLC v. AlertPoint, LLC et al.*, Civ. Act. No. 1:18-CV-03879-ELR (“Pending Litigation”).

As Judge Ross notes, on April 28, 2021, Applicant filed an Amended Notice of Appeal in this action to the Eleventh Circuit Court of Appeals (Appeal No. 21-11478-HH). In light of the pending appeal, the district court case has been administratively closed (stayed) until the Eleventh Circuit issues its ruling or otherwise concludes its review. Following the Eleventh Circuit’s disposition of the appeal, the district court will re-open the case, issue a scheduling order, and proceed with the remaining Counterclaims and Third-party Complaints.

Therefore, the parties continue to believe judicial economy will be served by continued suspension of the Opposition until final disposition of the civil action.

34ED, LLC has secured the express consent of the Applicant for this joint request for continued suspension.

Conclusion

In view of the foregoing, Opposer respectfully requests, with consent by Applicant, that suspension of the instant proceeding continue pending the outcome of the Pending Litigation.

Respectfully submitted,

Dated: May 17, 2021

POWELL IP LAW, LLC

/s/ Michael J. Powell
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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing **JOINT RESPONSE REQUESTING CONTINUED SUSPENSION IN VIEW OF CIVIL ACTION** was emailed on May 17, 2021 to Applicant's counsel at the following address:

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/s/ Michael J. Powell

Michael J. Powell

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DEAN OLDS, ROOMPRO *
TECHNOLOGIES, INC., and 34ED, *
LLC, *

Third-party Plaintiffs/ *
Counterclaim Plaintiffs, *
*
*

v. *

1:18-CV-03879-ELR

ALERTPOINT, LLC, *
*
*

Counterclaim Defendant, *

and *
*

DAVID ALLEN and EDCO- *
EDUCATIONAL CONSULTANTS, *
INC., *

Third-party Defendants. *
*

ORDER

On April 28, 2021, AlertPoint, LLC (“AlertPoint”) filed an Amended Notice of Appeal in this action. [Doc. 217]. The Eleventh Circuit Court of Appeals docketed AlertPoint’s case on May 3, 2021 (Appeal No. 21-11478-HH). [Doc. 224]. In light of the AlertPoint’s pending appeal, the Court **DIRECTS** the Clerk to

ADMINISTRATIVELY CLOSE this case until such time that the Eleventh Circuit issues its ruling or otherwise concludes its review of this matter.¹ Following the Eleventh Circuit's disposition of AlertPoint's appeal, this Court will re-open the case, issue a scheduling order based on the Parties' Second Amended Joint Preliminary Report and Discovery Plan [Doc. 223], and proceed with the remaining Counterclaims and Third-party Complaints. [Docs. 131, 137]. Until such time, while this action is administratively closed, all discovery and other deadlines are **STAYED**.

SO ORDERED, this 4th day of May, 2021.



Eleanor L. Ross
United States District Judge
Northern District of Georgia

¹ The Court notes that administrative closure will not prejudice the rights of any Party to this litigation. Upon resolution of the appellate proceedings, any Party may move to re-open the case.