

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

November 17, 2023

Opposition No. 91273333

*Entrepreneurial Ventures Capital Co., L.L.C.*

*v.*

*Williams-Sonoma, Inc.*

**Mary Beth Myles, Interlocutory Attorney:**

This proceeding now comes before the Board for consideration of Applicant's motion (filed April 4, 2023)<sup>1</sup> to suspend proceedings pending disposition of another Board proceeding.<sup>2</sup> The motion is fully briefed.

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<sup>1</sup> Applicant filed what appear to be duplicate copies of its motion to suspend at 18 and 19 TTABVUE. The Board therefore gives the earlier filed entry at 18 TTABVUE no consideration.

Citations to the record or briefs in this order include citations to the publicly available documents on the Trademark Trial and Appeal Board Inquiry System (TTABVUE), the Board's electronic docketing system. The number preceding "TTABVUE" corresponds to the docket entry number; the number(s) following "TTABVUE" refer to the page number(s) of that particular docket entry, if applicable. The Board expects that the parties will cite to the record using the TTABVUE docketing system throughout this proceeding.

<sup>2</sup> To the extent Opposer seeks to defer consideration of Applicant's motion to suspend pending its petition to disqualify, the request is moot. The petition to disqualify was denied September 27, 2023.

The Board has considered the parties' briefs on the contested motion, but does not repeat or discuss all of their arguments, except as necessary to explain the Board's order. *Guess? IP Holder LP v. Knowlux LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015).

Applicant seeks to suspend this proceeding pending final determination of another Board proceeding, Opposition No. 91270721, in which a third party has filed a counterclaim to cancel Opposer's Registration No. 3865993, which Opposer has pleaded in this proceeding in support of its entitlement to a statutory cause of action and claims. Applicant argues that because the counterclaim to cancel Opposer's pleaded registration will have a bearing on Opposer's claims in this proceeding, the Board should suspend this proceeding pending final determination of the counterclaim in Opposition No. 91270721.

In response, Opposer argues Opposition No. 91270721 involves a different defendant, with different claims and issues that will need to be determined independently and, therefore, that suspension of this proceeding is not appropriate.

Pursuant to Trademark Rule 2.117(a), the Board may, in its discretion, suspend a proceeding pending the final determination of a civil action or another Board proceeding that may have a bearing on the case. See TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 510.02(a) (2023). The Board possesses inherent power to manage its docket. *Opticians Association of America v. Independent Opticians of America Inc.*, 14 USPQ2d 2021, 2019 (D.N.J. 1990), *rev'd on other grounds*, 920 F.2d 187, 17 USPQ2d 1117 (3d Cir. 1990). Suspension is therefore a matter of Board discretion. See *id.*; *Hilson Research Inc. v. Society for Human*

*Resource Management*, 27 USPQ2d 1423 (TTAB 1993); and *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991).

The Board generally will not suspend a proceeding on the ground that another proceeding with a third party may be successful, thus making an opposition moot. See *New Orleans Louisiana Saints LLC and NFL Properties LLC v. Who Dat?, Inc.*, 99 USPQ2d 1550, 1551 (TTAB 2011). Where multiple oppositions are filed against the same application, “the Board seldom grants a motion to suspend” without consent, because “there is potential prejudice to those who did not consent to suspension.” *Id.* An exception may apply, however, where the different plaintiffs “plead one or more common claims” that indicate the evidence may be duplicative, thus ensuring consistency and conservation of Board resources. *Id.* In this case, Opposer is the plaintiff, but the facts are nevertheless analogous, because Opposer is the defendant to the counterclaim in Opposition No. 91270721. Thus, common claims or counterclaims asserted against the same registration may, in appropriate circumstances, warrant suspension to ensure consistency. There are no common claims asserted against Opposer’s pleaded registration, however.

Moreover, the pleadings in this proceeding have not yet closed. While the Board generally does not require that an issue be joined (i.e., that an answer be filed) before the Board will consider suspension pending a civil action or another Board proceeding, the Board may require that the issues be joined in both proceedings where there is no stipulation to suspend and the pleadings may assist with

determination of whether suspension is appropriate. *See generally* TBMP § 510.02(a) and authorities cited therein.

In view of the foregoing, the Board finds that suspension of this proceeding pending final determination of the counterclaim in Opposition No. 91270721 would not serve the interests of efficiency and judicial economy at this juncture. Applicant's motion to suspend is therefore **denied, without prejudice**.

Proceedings are resumed. Dates are reset as follows:

Time to Answer	<b>12/6/2023</b>
Deadline for Discovery Conference	<b>1/5/2024</b>
Discovery Opens	<b>1/5/2024</b>
Initial Disclosures Due	<b>2/4/2024</b>
Expert Disclosures Due	<b>6/3/2024</b>
Discovery Closes	<b>7/3/2024</b>
Plaintiff's Pretrial Disclosures Due	<b>8/17/2024</b>
Plaintiff's 30-day Trial Period Ends	<b>10/1/2024</b>
Defendant's Pretrial Disclosures Due	<b>10/16/2024</b>
Defendant's 30-day Trial Period Ends	<b>11/30/2024</b>
Plaintiff's Rebuttal Disclosures Due	<b>12/15/2024</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>1/14/2025</b>
Plaintiff's Opening Brief Due	<b>3/15/2025</b>
Defendant's Brief Due	<b>4/14/2025</b>
Plaintiff's Reply Brief Due	<b>4/29/2025</b>
Request for Oral Hearing (optional) Due	<b>5/9/2025</b>

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for

submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence.

### **IMPORTANT TRIAL AND BRIEFING INSTRUCTIONS**

Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Such briefs should utilize citations to the TTABVue record created during trial to facilitate the Board's review of the evidence at final hearing. *See* TBMP § 801.03. Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

### **TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS**

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. **Note:** Parties are strongly encouraged to check the entire document before filing.<sup>3</sup> The Board will not extend or reset proceeding schedule dates or other deadlines to allow

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<sup>3</sup> To facilitate accuracy, ESTTA provides previews of each page before submitting.

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time to re-file documents. For more tips and helpful filing information, please visit the [ESTTA help](#) webpage.