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

Proceeding no.	91283364
Party	Defendant Bruno Borges Garcia
Correspondence address	MIKE RODENBAUGH RODENBAUGH LAW 548 MARKET STREET, BOX 55819 SAN FRANCISCO, CA 95033 UNITED STATES Primary email: mike@rodenbaugh.com Secondary email(s): docket@rodenbaugh.com 415-738-8087
Submission	Motion to Suspend for Civil Action
Filer's name	Mike Rodenbaugh
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Signature	/Mike Rodenbaugh/
Date	05/01/2023
Attachments	NUTREE - Reply ISO Mot to Suspend.pdf(236428 bytes )

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

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EQUIBAL, INC.

Plaintiff,

vs.

BRUNO BORGES GARCIA,

Defendant.

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: Opposition No.: 91283364  
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**REPLY BRIEF IN SUPPORT OF  
MOTION FOR SUSPENSION OF PROCEEDINGS**

Defendant Bruno Borges Garcia, pursuant to 37 CFR § 2.117 and TBMP Rule 510.02, has moved to suspend this proceeding pending the determination of a federal lawsuit filed by Plaintiff against Defendant and other defendants. Garcia attached, as Exhibit A to the Motion, a true and correct copy of the Amended Complaint filed by Plaintiff in the matter *Equibal, Inc. v. 365 SUN LLC, et al.*, in the Southern District of New York, Case No. 7:21-cv-6254.

Whenever it comes to the attention of the Board that a party to a case pending before it is involved in a civil action that may have a bearing on the Board case, proceedings before the Board may be suspended until final determination of the civil action. *See* Trademark Rule 2.117(a); and TBMP § 510.02 (2015). The civil action need not even be dispositive, it need only have a bearing on the issues before the Board. *E.g., New Orleans Louisiana Saints LLC and NFL Properties LLC*, 99 USPQ2d 1550 (TTAB

2011) (*citing* 6 McCarthy on Trademarks and Unfair Competition §32:47 (4th ed., June 2011) (“It is standard procedure for the Trademark Board to stay administrative proceedings pending the outcome of court litigation between the same parties involving related issues.”). Indeed, this TBMP section states at Note 8 (citing cases):

Unless there are unusual circumstances, the Board will suspend proceedings in the case before it if the final determination of the other proceeding may have a bearing on the issues before the Board.

Plaintiff filed the Amended Complaint alleging trademark infringement under federal law, unfair competition under federal law and federal common law, and violation of New York law. It is clear from a review of Plaintiff’s Amended Complaint that this Opposition proceeding before the Board would not dispose of all the issues between the parties, so it would make sense to wait and see what happens in the federal action before continuing along a parallel path of complex, expensive and duplicative litigation. *Ibid.*; *see also, e.g., Farah v. Topiclear Beauty Prods, Inc.*, 2003 WL 22022077, \*5 (TTAB 2003) (“Suspension would avoid the undesirable result of the parties litigating the same issue in two forums, with potentially inconsistent results and would minimize waste of both the parties' and the Board's resources.”).

Plaintiff’s only argument in opposition to suspension is that Plaintiff had allegedly been unable to serve Defendant with process in the civil action. However, since then the Plaintiff has served Defendant on April 21, 2023. Attached as Exhibit A to this Reply brief is a true and correct copy of the Affidavit of Service, and evidence that it was filed in the civil action on April 24, 2023. Therefore, Plaintiff has no remaining argument in opposition to suspension, and the motion should be granted pursuant to the aforementioned authorities.

For the reasons set forth above, Defendant respectfully requests that the Board suspend the proceedings herein pending final determination of the civil action pending in the District Court.

RESPECTFULLY SUBMITTED,

DATED: May 1, 2023

By: /s/ Mike Rodenbaugh

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*Attorneys for Defendant*

# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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EQUIBAL, INC.

Plaintiff,

**AFFIDAVIT OF SERVICE**

- against -

Docket No.: 7:21-cv-06254-VB


365 SUN LLC d/b/a Nutree Cosmetics,  
NUTREE PROFESSIONAL BRAZIL, LANCE  
THOMPSON, NATALIA Y LIKHACHEVA,  
BRUNO BORGES GARCIA, and CHROMUS  
COMERCIAL EIRELLI.

Defendants.


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I, Andre Arias, declare under penalty of perjury that I served a copy of the Amended Summons, Amended Complaint, and April 10, 2023 Opinion and Order (Dkt. 118), upon Defendants Chromus Comercial Eirelli and Bruno Borges Garcia via alternative service by Certified Mail to the Director of the United State Patent and Trademark Office on April 21, 2023.

Dated: Montvale, New Jersey  
April 24, 2023

  
\_\_\_\_\_  
Andre Arias

Sworn to before me, on this  
24<sup>th</sup> day of April, 2023

  
\_\_\_\_\_  
Notary Public

LORI ABDINOOR  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
MY COMMISSION EXPIRES MAY 23, 2027

U.S. District Court

Southern District of New York

**Notice of Electronic Filing**

The following transaction was entered by Graifman, Gary on 4/24/2023 at 4:42 PM EDT and filed on 4/24/2023

**Case Name:** Equibal, Inc. v. 365 Sun LLC et al

**Case Number:** [7:21-cv-06254-VB](#)

**Filer:** Equibal, Inc.

**Document Number:** [119](#)

**Docket Text:**

**AFFIDAVIT OF SERVICE. Chromus Comercial Eirelli served on 4/21/2023, answer due 5/12/2023; Bruno Borges Garcia served on 4/21/2023, answer due 5/12/2023. Service was made by MAIL. Document filed by Equibal, Inc...(Graifman, Gary)**