

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Baxley

Mailed: April 5, 2004

Cancellation No. 92042849

Five Y Clothing, Inc.

v.

Paul Frank Industries, Inc.

Andrew P. Baxley, Interlocutory Attorney:

On March 30, 2004, the Board issued an order granting respondent's motion to suspend the above-captioned proceeding pending final disposition of Case No. SA CV03 1242 CJC (MLGR), a civil action in the United States District Court for the Central District of California in which the parties to this proceeding are involved. Petitioner's "notice of reliance" (filed March 24, 2004) subsequently became associated with the proceeding file.

A cursory review of the "notice of reliance" indicates that, in addition to a copy of a March 12, 2004 order in which the United States District Court for the Central District of California of petitioner's *ex parte* application to suspend the parties' civil action pending disposition of

this proceeding,¹ it includes arguments in response to respondent's reply brief in connection with the motion to suspend was decided in the March 30, 2004 order. As such, caption notwithstanding, it is actually a sur-reply brief in connection with respondent's motion to suspend.² Inasmuch as sur-reply briefs in connection with motions in Board *inter partes* proceedings are impermissible under Trademark Rule 2.127(a), the "notice of reliance" has received no consideration.

Proceedings herein remain suspended in accordance with the March 30, 2004 order. However, that order is hereby corrected to state that proceedings herein are suspended pending final disposition, i.e., including any appeals or remands, of Case No. SA CV 03-1242-CJC(MLGx), as the case is identified in district court's March 12, 2004 order.

¹ The Board notes that the district court order that respondent sought to bring to the Board's attention by way of the "notice of reliance" had been included as an exhibit to respondent's reply brief in connection with the motion to suspend and was considered in the Board's decision regarding that motion.

² Further, a notice of reliance is not a means for filing exhibits after briefing of motions in Board *inter partes* proceedings. Rather, a notice of reliance is essentially a cover letter that is used for introducing evidence that need not be introduced by way of witness testimony during a party's testimony period. See TBMP Section 704.02.