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

Proceeding	92051386
Party	Defendant Jay-Y Enterprise Co., Inc.
Correspondence Address	Constance R. Lindman Overhauser & Lindman, LLC 740 W. Green Meadows Drive, Suite 300 Greenfield, IN 46140 UNITED STATES crlindman@overhauser.com
Submission	Motion to Suspend for Civil Action
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Time Plaza, Inc.,)		
)		
Petitioner)	Cancellation No.:	92051386
)		
versus)	Registration No.:	3,418,299
)		
Jay-Y Enterprise Co., Inc.,)	Mark:	LOCS
)		
Registrant)		
_____)		

REPLY IN SUPPORT OF MOTION TO SUSPEND FOR CIVIL ACTION

Registrant Jay-Y Enterprise Co., Inc. moved the Board to suspend this proceeding pursuant to TBMP §510.02(a) on the grounds that the parties are engaged in a civil action in the Federal District Court for Central District of California which may have a bearing on this proceeding. Petitioner Time Plaza, Inc. opposed the motion on the grounds that Petitioner raised only one basis for cancellation of Registrant’s LOCS registration in the federal action (namely, that the mark is descriptive) while Petitioner raised three grounds for cancellation of the registration in this Proceeding (namely, descriptiveness, fraud and deception).

Registrant directs the Board to its decision to suspend Cancellation No. 92049828 in Linden Research, Inc. v. Richard P. Minsky. In that proceeding, the Petitioner opposed suspension on the grounds that the federal action involved infringement and dilution claims while the cancellation proceeding alleged fraud. Although the claims differed between the federal action and the cancellation proceeding, the Board suspended the cancellation proceeding because “to prevail in the district court, [registrant/plaintiff] must establish that he has protectable trademark rights in the involved ...mark” and the federal court’s findings with

respect to the registrant's rights could have a bearing on the fraud claim in the cancellation proceeding.

Like Cancellation No. 92049828, the district court's findings in the federal action between Registrant and Petitioner could (and indeed are likely to) have a bearing on the claims in this Proceeding. Petitioner has attacked Registrant's LOCS registration on the grounds of descriptiveness in both this Proceeding and in the federal action. Petitioner's additional attacks on the registration that were made only in this Proceeding, fraud and deception, are related to the descriptiveness claim. Petitioner's Notice of Petition for Cancellation alleges in Paragraphs 9-11 that Registrant committed fraud because Registrant knew that the mark was descriptive when it filed its application. And the Notice of Petition for Cancellation alleges in Paragraphs 13 and 14 that the LOCS mark is deceptive as a result of its being descriptive.

The federal court's findings of fact regarding the alleged descriptiveness of the LOCS mark will have a bearing on all of the allegations in Petitioner's Notice of Petition for Cancellation. These findings will be binding on the Board. See *American Bakeries v. Co. v. Pan-O-Gold Baking Co.*, 2 USPQ2d 1206 (D.C. Minn. 1986); *Whopper-Burger, Inc. v. Burger King Corp.*, 171 USPQ 805 (TTAB 1971). Therefore, this proceeding should be suspending pending the outcome of the federal court action.

Respectfully Submitted,

By: s/Constance R. Lindman
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MOTION TO SUSPEND FOR CIVIL ACTION was served by email this 28th day of September, 2009 on Jen-Feng Lee, WorldEsquire Law Firm, 80 S. Lake Avenue, Suite 708, Pasadena, CA 91101

s/Constance R. Lindman
Constance R. Lindman, Esq.