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

Proceeding	92062852
Party	Plaintiff Christian L. Rishel
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Date	01/14/2016
Attachments	Final brief-2.pdf(633486 bytes )

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

In the matter of Registration No.: 4858208  
Registration Date: November 24, 2015  
Trademark: MEALSPEC

CHRISTIAN L. RISHEL

Petitioner,

vs.

DAVE HUSELTON

Registrant.

Cancellation No.: 92062852

**BRIEF IN RESPONSE TO MOTION TO SUSPEND PROCEEDING IN VIEW OF  
PENDING CIVIL ACTION PURSUANT TO TRADEMARK RULE 2.117(a)**

Pursuant to the rules of the Trademark Trial and Appeal Board, Petitioner Christian Rishel, by and through its attorneys Phillips & Pfau, L.L.P. hereby submits this Response and Objection to Registrant David Huselton's motion to suspend proceedings pursuant to Trademark Rule 2.117(37 C.F.R. SECTION 2.117(a) ("Motion to Suspend").

**I. RESPONSE TO BACKGROUND OF THE FACTS:**

Petitioner does not dispute the facts as presented by Registrant.

Petitioner further clarifies that as of January 13, 2016, there is a pending Order Granting Defendant/Counter Plaintiff's Motion to Dismiss and Plaintiff/Counter-Defendant's Motion to Dismiss in the Civil Action Petitioner relies on for the basis of his Motion to Suspend. This order has been approved by both Parties; but, based on knowledge and belief, Registrant's counsel, to date, has failed to submit it to the Judge for signature and entry. Petitioner submits herewith a copy of the Order Granting Defendant/Counter Plaintiff's Motion to Dismiss and Plaintiff/Counter-Defendant's Motion to Dismiss as Exhibit A.

## II. ARGUMENT

Registrant's reliance on a dismissed case in support his Motion to Suspend is misplaced as the Civil Action is pending dismissal. The applicable regulation, 37 C.F.R. § 2.117(a), permits suspension of a cancellation proceeding "until termination of the civil action" in which the parties are engaged. As the Civil Action will, based on reason and belief, be dismissed, at this time, this action before the TTAB is the only pending matter where the issue of validity can be determined.

Assuming in *arguendo* that the Civil Action was still pending, the TTAB is not necessarily precluded from hearing this matter. Although proceedings brought before the TTAB are generally suspended pending the outcome of litigation, this is not always the case. For example, in *B&B Hardware v. Hargis Industries*, 13-352 (U.S. Mar. 24, 2015), the parties did not suspend the TTAB proceeding pending the outcome of district court litigation.

Further, Registrant argues, *inter alia* that the Civil Action did not raise the issue of non-correctible errors in the application for registration naming Registrant as the owner of the MEALSPEC. As such, the outcome of the Civil Action would not have been dispositive of the issues raised in the Cancellation Proceedings.

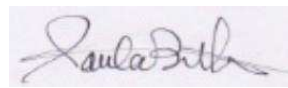
Finally, proceedings brought before the TTAB are generally limited to issues surrounding registration; as the Civil Action has been dismissed, invalidation of the MEALSPEC trademark is the extent of the relief currently being sought by the Petitioner.

## III. CONCLUSION

Accordingly, Petitioner respectfully requests that the Board deny Respondent's request to suspend the current proceedings as there are no pending actions which would be potentially dispositive of the Cancellation proceedings. Further, that, any motion submitted by Respondent to delay the schedule for discovery, as set forth by the Board, should be denied, *sua sponte*.

January 13, 2016

Respectfully Submitted,  
PHILLIPS & PFAU, LLP



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## **Exhibit A**

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT  
IN AND FOR CLAY COUNTY, FLORIDA**

DAVID HUSELTON,  
Plaintiff/ Counter-Defendant,

Case No: 2015-CA-305 (E)

Division: E

vs.

CHRISTIAN RISHEL, individually,  
and in a representative capacity on behalf of  
and in the right of MEALSPEC, LLC,  
a Florida limited Liability Company,  
Defendant/Counter-Plaintiff,

vs.

KELLY HUSELTON, and;  
FED BIZ DEVELOPMENT, INC.,  
a Florida Corporation d/b/a/ Fed Biz Foods,  
Third Party Defendants.

\_\_\_\_\_ /

**ORDER GRANTING  
DEFENDANT/COUNTER PLAINTIFF'S MOTION TO DISMISS AND  
PLAINTIFF / COUNTER-DEFENDANT'S MOTION TO DISMISS**

THIS CAUSE came before this Court on the Defendant/Counter-Plaintiff Motion to Dismiss and the Plaintiff/Counter-Defendant and Third Party Defendants' Joint Motion to Dismiss, on September 9<sup>th</sup>, 2015, and after review of the respective motions, hearing the arguments of counsel, reviewing the court file and otherwise being duly advised in the premises herein, it is

**ORDERED AND ADJUDGED**

1. Defendant/Counter-Plaintiff's Motion to Dismiss is GRANTED, and the Plaintiff/Counter-Defendant is granted leave to file an amended complaint within twenty (20) days from the date of this Order.

2. Plaintiff/Counter-Defendant and Third Party Defendant's Motion to Dismiss is GRANTED, and Fed Biz Development, Inc., a Florida Corporation d/b/a/ Fed Biz Foods is DISMISSED as a Third Party Defendant, and the Defendant/Counter-Plaintiff is granted leave to file an amended counterclaim and / or third party claim within twenty (20) days from the date of this Order.

3. The parties are required further to clarify the authority for the respective requests for attorney's fees.

**DONE AND ORDERED** in Chambers at Green Cove Springs, Clay County, Florida,  
this \_\_\_\_\_ day of October 2015.

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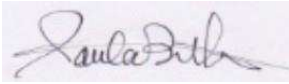
Michael Sharrit  
Circuit Court Judge

Copies to:  
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**CERTIFICATE OF SERVICE BY MAIL**

I hereby certify that a true and complete copy of the Brief in Response to Motion to Suspend Proceeding in View of Pending Civil Action Pursuant to Trademark Rule 2.117(a) has been served on Registrant by mailing a copy to Registrant's counsel of record at the address shown below via First Class Mail, postage prepaid, on the 14th day of January, 2016.

MARK F WRIGHT  
ATTORNEY FOR REGISTRANT  
WRIGHT LAW GROUP, PLLC  
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MESA, ARIZONA 85206

A handwritten signature in black ink, appearing to read "Paula B. Phillips", is written over a horizontal line.

Paula B. Phillips  
Phillips & Pfau, LLP  
Attorneys for Petitioner