UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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February 9, 2022

Cancellation No. 92068213

Charles Bertini

v.

Apple Inc.

By the Trademark Trial and Appeal Board:

Proceedings are suspended pending disposition the appeal pending in the United States Court of Appeals for the Federal Circuit, filed on September 8, 2021, in another Board proceeding, namely, Opposition No. 91229891.[1]

Trademark Rule 2.117(a), 37 C.F.R. § 2.117(a), provides the following:

> Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a civil action, another Board proceeding, or an expungement or reexamination proceeding may have a bearing on a pending case, proceedings before the Board may be suspended until termination of the civil action, the other Board proceeding, or the expungement or reexamination proceeding. A civil action or proceeding is not considered to have been terminated until an order or ruling that ends litigation has been rendered and noticed and the time for any appeal or other further review has expired with no further review sought.

Suspension of a Board proceeding pending the final determination of another Board proceeding is solely within the discretion of the Board and is generally suitable when a ruling on the other proceeding will have a bearing on the issues before the

[1] Appeal styled *Charles Bertini v. Apple Inc.,* Case No. 21-2301.

Board. *See* Trademark Board Manual of Procedure (TBMP) (2021) § 510.02(a) and authorities discussed therein; and *The Tamarkin Co. v. Seaway Food Town Inc.,* 34 USPQ2d 1587, 1592 (TTAB 1995); *Martin Beverage Co., Inc. v. Colita Beverage Corp*., 169 USPQ 568 (TTAB 1971).

Accordingly, and inasmuch as a ruling on the appeal may have a bearing on the issues before the Board in this case, proceedings herein are suspended pending the final disposition of the appeal. A proceeding is considered to have been finally determined when an order or ruling that ends litigation has been rendered, and no appeal has been filed, or all appeals filed have been decided and the time for any further review has expired. *See* 37 C.F.R. § 2,117(a). The expiration of any further review includes the time for petitioning for rehearing or U.S. Supreme Court review. The Board does not resume its proceedings until after the time for seeking such review has expired, a decision denying or granting such review has been rendered, and any further review has been completed. TBMP § 510.02(b)

Within twenty days after final determination of the appeal, either party should notify the Board so that this case may be called up for appropriate action.

During the suspension period, the parties shall notify the Board of any address or email address changes.

If proceedings involving these parties are not settled following final determination of the appeal, a decision on the merits in this case will issue in due course.

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