

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500  
General Email: [TTABInfo@uspto.gov](mailto:TTABInfo@uspto.gov)

July 1, 2022

Cancellation No. 92075983

*Bayer Consumer Care AG*

*v.*

*Belmora LLC*

**Michael Webster, Managing Interlocutory Attorney:**

On January 19, 2021, the Board suspended this cancellation proceeding pending final disposition of Civil Action No. 1:14-cv-00847-GBL-JFA in the United States District Court for the Eastern District of Virginia (the “Civil Action”) in view of the parties’ consented motion stating that the Civil Action will likely have a bearing on the Board proceeding.<sup>4</sup> TTABVue 3. On January 26, 2022, the Board issued an order requesting the status of the Civil Action.

On February 22, 2022, the parties filed separate responses to the order stating that the Civil Action remains ongoing. Petitioner contends, however, that the proceeding should resume so that it can move for judgment on the pleadings. Petitioner argues that issue preclusion applies to this proceeding because the Board issued a final decision cancelling Respondent’s Registration No. 2924440 for the mark FLANAX in another Board proceeding.<sup>8</sup> TTABVue 4-5.

Respondent disagrees that issue preclusion applies to this case because the prior Board proceeding “involves different marks for different goods” and the present cancellation involves three separate marks. 9 TTABVUE 4. Respondent also argues that there is a prior pending Board proceeding (No. 91229792) that should be determined before the present proceeding which is currently suspended pending the disposition of the Civil Action. *Id.*

To the extent that Petitioner’s response to the Board order may be considered a request to resume the present proceeding despite the ongoing Civil Action, the request is **denied**. Petitioner’s arguments are unsupported and unpersuasive.<sup>1</sup> Moreover, Petitioner does not argue that the issues in the pending Civil Action will not have a bearing on the proceeding at hand.

In view thereof, proceedings remain **suspended** pending final determination of the Civil Action. *See* Trademark Rule 2.117(a).

Within **twenty days** after such final determination, the parties shall notify the Board so that this proceeding may be called up for appropriate action.<sup>2</sup> Such notification to the Board should include a copy of any final order or final judgment which issued in the civil action.

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

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<sup>1</sup> The Board notes that Petitioner has not provided a copy of the Board’s decision in the prior proceeding or the proceeding number.

<sup>2</sup> 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* TBMP § 510.02(b).