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

Proceeding No.	92075983
Filing Party	Plaintiff Bayer Consumer Care AG
Other Party	Defendant Belmora LLC
Pending Motion	There is no motion currently pending and no other motion is being filed concurrent with this consent motion.
Attachments	Consent motion to suspend.pdf(73991 bytes)

Consent Motion for Suspension in View of Civil Proceeding

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, Bayer Consumer Care AG hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Bayer Consumer Care AG has secured the express consent of all other parties to this proceeding for the suspension requested herein.

Certificate of Service

The undersigned hereby certifies that a copy of this filing has been served upon all parties, at their address of record by Email on this date.

Respectfully submitted,

/Jessica A. Ekhoﬀ/

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01/19/2021

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Reg. Nos. 5,768,512; 6,074,745; and 6,074,750:
FLANAX MENSTRUAL PAIN RELIEVER, FLANAX, and BELMORA LLC FLANAX and

Design,  FLANAX

BAYER CONSUMER CARE AG,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92075983
)	
BELMORA LLC,)	
)	
Registrant.)	

**CONSENT MOTION TO SUSPEND
PROCEEDING PENDING OUTCOME OF CIVIL ACTION**

Pursuant to 37 C.F.R. § 2.117 and T.B.M.P. 510.02(a), Petitioner Bayer Consumer Care AG (“Bayer”) hereby moves the Board, with the consent of Registrant Belmora LLC (“Belmora”) (collectively, the “Parties”), to suspend this proceeding pending the outcome of a federal civil action between the Parties.

In support of this motion, Bayer states the following:

1. The instant proceeding before the Board involves three FLANAX-formative trademark registrations owned by Belmora:
 - Reg. No. 5,768,512 for FLANAX MENSTRUAL PAIN RELIEVER for “Orally ingestible tablets of Naproxen Sodium for use as an analgesic” in Class 5, which registered on June 4, 2019;
 - Reg. No. 6,074,745 for FLANAX for “Antacids; cough lozenges; liniments” in Class 5, which registered on June 9, 2020; and

- Reg. No. 6,074,750 for BELMORA LLC FLANAX and Design,



, for “Antacids; cough lozenges; liniments; preparation for the relief of pain” in Class 5, which registered on June 9, 2020 (collectively, “FLANAX Registrations at Issue”).

2. In June 2007, Bayer petitioned the Trademark Trial and Appeal Board (“TTAB”) to cancel Belmora’s Registration No. 2,924,440 for the trademark FLANAX for “Orally ingestible tablets of Naproxen Sodium for use as an analgesic” (“440 Registration”) Cancellation No. 92047741.

3. On April 17, 2014, the TTAB issued a ruling cancelling Belmora’s ‘440 Registration for misrepresentation of source pursuant to 15 U.S.C. § 1064(3).

4. Belmora appealed the TTAB’s ruling to the United States District Court for the Eastern District of Virginia. Case No. 1:14-cv-00847-GBL-JFA (the “Civil Action”).

5. The Civil Action remains ongoing and is currently on appeal to the United States Court of Appeals for the Fourth Circuit. Case No. 18-2183.

6. The Parties participated in an oral argument before the Fourth Circuit on October 26, 2020, and are awaiting the Fourth Circuit’s ruling on the Parties’ cross-appeals.

7. The Civil Action involves some of the same parties and concerns the FLANAX mark, and shares common issues with the present cancellation proceeding. The outcome of the Civil Action, therefore, may have some bearing on the instant proceeding.

8. On September 21, 2016, Belmora filed a consent motion to suspend the opposition proceeding Bayer had filed against another of Belmora's applications to register FLANAX (Serial No. 86/959,320) for "Antacids; Cough lozenges; Oral analgesics; Pharmaceutical preparations, namely, an analgesic for human consumption taken orally; Topical analgesic creams; Topical analgesics" in Class 5 ("320 Application"). Opposition No. 91229792. That opposition has been suspended pending the outcome of the Civil Action since September 21, 2016. *Id.* at 5 TTABVUE.

9. The parties therefore respectfully request that the Board suspend the instant proceeding pending the outcome of the Civil Action, as it did for the opposition regarding the '320 FLANAX application.

10. Applicant's counsel, Joel MacMull, consented to this request via email on January 18, 2021.

Dated: January 19, 2021

Respectfully submitted,

PATTISHALL, MCAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **CONSENT MOTION TO SUSPEND PROCEEDING PENDING OUTCOME OF CIVIL ACTION** was served upon the below-named counsel of record by email on January 19, 2021:

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