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

Proceeding	92076810
Party	Plaintiff YYGM, SA
Correspondence Address	KEITH WESLEY BROWNE GEORGE ROSS O'BRIEN ANNAGUEY & ELLIS, LLP 2121 AVENUE OF THE STARS, SUITE 2800 LOS ANGELES, CA 90067 UNITED STATES Primary Email: kwesley@bgrfirm.com Secondary Email(s): elauritsen@bgrfirm.com (310) 274-7100
Submission	Reply in Support of Motion
Filer's Name	Keith Wesley
Filer's email	kwesley@bgrfirm.com, elauritsen@bgrfirm.com
Signature	/Keith Wesley/
Date	11/29/2021
Attachments	Reply iso Motion to Suspend.pdf(11080 bytes)

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

In the Matter of Trademark Registration No. 6,056,987
For the Mark **RATBASTARD SUPPLY CO.**

Y.Y.G.M. SA,

Petitioner,

Cancellation No. 92076810

vs.

JOHN CAPOVANI,

Respondent

_____ /

Y.Y.G.M. SA'S REPLY IN SUPPORT OF ITS MOTION TO SUSPEND

Respondent John Capovani (“Respondent”) resists the motion to suspend of Petitioner Y.Y.G.M. SA (“Petitioner”) by reference to irrelevant rules and distorted interpretations of the civil action upon which Petitioner’s motion is based. Petitioner trusts the Board to recognize Respondent’s strained and misplaced arguments as such and to swiftly reject them, and wishes to honor the Board’s policies disfavoring reply briefs as much as possible. There are, however, three simple points that Petitioner feels compelled to make in reply.

First, Respondent fixates upon a standard of review that is simply not implicated by Petitioner’s motion. Petitioner has moved to suspend these proceedings, not to extend them. Respondent emphasizes that motions to extend must set forth specific facts illustrating that the requested relief is appropriate, and that they face careful scrutiny from the board. Respondent flatly states, “Suspensions are omnibus extensions and should receive the same scrutiny as any extension.” But Respondent cites no authorities in support of such principle, which flies in the face of the TBMP itself. Indeed, if Respondent were correct in that naked assertion, one would

think that the two types of motions would be governed by overlapping rules. They are not. Rules regarding motions to extend are laid out in section 509, and rules regarding motions to suspend are laid out in section 510. Each section provides a sufficiently detailed framework that it is wholly unnecessary to analogize or borrow rules from one and apply them to the other. And of course, nothing in section 510 calls for the heightened scrutiny Respondent seeks to apply to Petitioner's motion.

Second, in response to Respondent's argument that the issues in this proceeding and the civil action do not in fact overlap, Petitioner calls the Board's attention to paragraph 23 of the complaint in the civil action, which reads, "In the alternative, should there be a likelihood of confusion, the Plaintiff seeks a declaration that its use of the YRB Marks pre-dates Capovani's use of the RSC Marks, and, therefore, Capovani too is infringing upon Plaintiff's trademark rights." This allegation, which is conveniently ignored in Respondent's brief, directly contradicts Respondent's allegation that "[t]he Complaint does not allege that Petitioner used YELLOW RAT BASTARD before Mr. Capovani used RATBASTARD SUPPLY CO." Even if the word "fraud" does not appear in the complaint, therefore, the civil action clearly involves issues that closely overlap with, and whose resolution may be dispositive of, this proceeding.

Finally, regarding Petitioner's failure to serve the motion in accordance with the applicable rules, Petitioner notes that Respondent filed a timely response and was thus fully apprised of the motion. No harm whatsoever was thus incurred, and Respondent does not bother to attempt to identify any. In addition, Petitioner has served its motion now, as discussed in the declaration of Keith Wesley filed shortly after Respondent's brief.

For each of the foregoing reasons, Petitioner respectfully requests that the Board reject Respondent's attempts to mischaracterize the facts and events underlying Petitioner's motion.

Instead, the Board should implement its well-settled rules requiring the suspension of TTAB proceedings pending the resolution of civil actions concerning overlapping issues.

Respectfully submitted,

Dated: November 29, 2021

/Keith J. Wesley/
Keith J. Wesley, Esq.
Browne George Ross
O'Brien Annaguey & Ellis, LLP
2121 Ave. of the Stars, Suite 2800
Los Angeles, CA 9006
(310) 274-7100
kwesley@bgrfirm.com

Attorneys for Petitioner Y.Y.G.M. SA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, a copy of Y.Y.G.M. SA's Reply in Support of its Motion to Suspend has been served upon Respondent John Capovani by email at the email address of his counsel of record, including:

Lee Palmateer
LEE PALMATEER LAW OFFICE LLC
90 State St., Suite 700
Albany, NY 12207
lee@palmateerlaw.com

Respectfully submitted,

Dated: November 29, 2021

/Robin Goodwin/
Robin Goodwin
Legal Assistant
Browne George Ross
O'Brien Annaguey & Ellis, LLP
2121 Ave. of the Stars, Suite 2800
Los Angeles, CA 9006
(310) 274-7100
rgoodwin@bgrfirm.com