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

02 MAY 23 AM 8:28

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Miramax Film Corp.,

Serial No. 76/056,122

Opposer,

OPPOSITION NO. 125,014

vs.

Mark: SPYKISS

Spykiss, Inc.,

Applicant.



05-16-2002

U.S. Patent & TMO/c/TM Mail Rpt Dt. #70

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**MOTION TO CONSOLIDATE**

Applicant Spykiss, Inc. hereby moves to consolidate the proceedings in this matter (i.e., Opposition No. 125,014) with the proceedings in Opposition No. 91150923. In support of the instant motion, Applicant states as follows:

Rule 42(a) of the Federal Rules of Civil Procedure ("Rule 42(a)") provides, in pertinent part, that when actions involving common questions of law or fact are pending before a court, the court may order those actions consolidated and it may make such other orders concerning the proceedings as may tend to avoid unnecessary costs or delay. Fed. R. Civ. Proc. 42(a).

Rule 2.116(a) of the Trademark Rules of Practice makes it clear that Rule 42(a) is applicable to proceedings pending before this Board.

Here, Applicant Spykiss, Inc. and Opposer Miramax Film Corp. are involved in two separate opposition proceedings -- Opposition No. 125,014 and Opposition No. 91150923. Both proceedings involve exactly the same parties and exactly the same mark, i.e., the composite word mark "Spykiss". Both proceedings involve exactly the same legal issue, which is: whether Applicant should be permitted to register the mark "Spykiss" despite Opposer's contention that it has prior trademark rights in the composite term "spy kids".

In resolving the foregoing issue, the evidence which Opposer will rely upon in Opposition No. 125,014 will undoubtedly be exactly the same evidence which it will rely upon in Opposition No. 91150923 and the witnesses who will give that evidence will undoubtedly be the same.

Moreover, if the above-described proceedings were consolidated, the parties could take discovery and present evidence in one proceeding instead of two and Board could issue one decision instead of two. Moreover, the due dates and deadlines in the two proceedings have already been coordinated. Thus, it makes perfect economic sense to consolidate Opposition No. 125,014 with Opposition No. 91150923.

#### CONCLUSION

For the foregoing reasons, the instant motion should be granted and the Board should order that Opposition No. 125,014

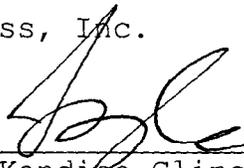
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and Opposition No. 91150923<sup>f</sup> are consolidated, that all future papers and motions should be filed in Opposition No. 125,014, which is the "low-numbered" proceeding and that caption page of all future filings should reflect the fact that the two proceeding have been consolidated.

Dated: May 16, 2002

Respectfully submitted,

Spykiss, Inc.

By: 

Kandice Cline

Its: Chief Executive Officer

Phone: 213.253.4779

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