

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In The Matter Of Application Serial No. 76-093,512
Published In The *Official Gazette*, October 23, 2001

U.S. Patent & TMO/TM Mail Rcpt. Dt. #57



08-29-2002

OS Asset, Inc. and
Outback Steakhouse of Florida, Inc.

Opposers,

v.

John Herod LLC

Applicant.

Opposition No. 125,328

**STIPULATED MOTION TO
CONSOLIDATE OPPOSITION
NUMBERS 125,328 AND 91152016**

Opposers OS Asset, Inc. and Outback Steakhouse of Florida, Inc. (hereinafter “Outback”) and John Herod LLC (hereinafter “Applicant”), through their undersigned attorneys, hereby respectfully request that opposition proceeding 91152016 (regarding application serial no. 76/093/513) be consolidated with opposition proceeding 125,328 (regarding application serial no. 76/093,512). The parties further request that the discovery and testimony periods in opposition proceeding 91152016 govern the consolidated proceeding. The reasons for this stipulated motion are set forth below.

Outback is opposing Applicant’s attempted registration of the OUTBACK SHEEPSKINS mark in each of the aforementioned opposition proceedings (one application seeks registration of the word mark and the other registration of a design mark incorporating the word mark). The applications at issue in the opposition proceedings seek registration of the mark under the same recitation of services in the same international class. Thus, common questions of law and fact are pending in the subject oppositions.

It is well settled that the Trademark Trial and Appeal Board may order the consolidation of cases where common questions of law or fact are present. See FRCP 42(a); Regatta Sport Ltd. v. Telux-Pioneer Inc., 20 USPQ2d 1154 (TTAB 1991); World Hockey Ass'n v. Tudor Metal Products Corp., 185 USPQ 246 (TTAB 1975) (consolidation ordered where issues were substantially the same and consolidation would be advantageous to both parties). In sum, consolidation of the proceedings would streamline these proceedings and be advantageous to both parties because the aforementioned opposition proceedings involve the same parties and common questions of law and fact.

Opposers and Applicant also request that the consolidated proceeding be governed by the discovery and testimony periods prescribed in opposition number 91152016 in order to allow the parties maximum time to explore settlement possibilities prior to incurring further discovery costs.

Counsel for Applicant, Thomas W. Brooke, granted his consent to this Stipulated Motion in an email message dated August 28, 2002.

Respectfully Submitted,

OS ASSET, INC. AND OUTBACK
STEAKHOUSE OF FLORIDA, INC.,
By Its Attorneys



Eric J. Steiner (Ohio Bar No. 0072725)
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216-621-0200

JOHN HEROD LLC

By Its Attorneys, through written consent of:

Thomas W. Brooke
Holland & Knight LLP
2099 Pennsylvania Ave. N.W.
Suite 100
Washington D.C. 20006-6801
202-955-5564

Date: 8/29/02

CERTIFICATE OF MAILING AND SERVICE

The undersigned hereby certifies that the Stipulated Motion to Consolidate Opposition Numbers 125,328 and 91152016 is being deposited in the United States postal service, as Express Mail, in an envelope addressed to: Commissioner for Trademarks, Box TTAB No Fee, 2900 Crystal Drive, Arlington, Virginia, 22202-3513 and by regular U.S. Mail, postage prepaid, to counsel for Applicant, Thomas W. Brooke, Holland & Knight LLP, 2099 Pennsylvania Ave. N.W., Suite 100, Washington D.C. 20006-6801 on this 29th day of August 2002.



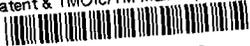
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August 29, 2002

VIA EXPRESS MAIL NO. **EL898821614US**

SEP-9 PM 8:44
T. MARK TITALE
FEDERAL BOARD

Commissioner for Trademarks
Box TTAB, No Fee
2900 Crystal Drive
Arlington, VA 22202-3513

**Re: Opposition No. 125,328 to Federal Trademark Application for
OUTBACK SHEEPSKINS Mark in International Class 35
(Application No. 76/093,512)**

Dear Madam:

Please find enclosed a Stipulated Motion to Consolidate Opposition Numbers 125,328 and 91152016 for filing in the above-referenced matter. Please contact me if you have any questions or concerns. Thank you.

Sincerely,

Eric J. Steiner

cc: Thomas W. Brooke, Esq. (w/ enc.)

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