08-29-2003
U.S. Patent & TM Ofc/TM Mail Rcpt Dt. #22

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

PUMPERNICKEL ASSOCIATES, LLC,	)	Opposition No. 91155185
	)	Opposition No. 91155574
Opposer,	)	Opposition No. 91155474
	)	Opposition No. 91155423
v.	)	Opposition No. 91155383
	)	Opposition No. 91155341
SARA LEE DE/N.V.,	)	Opposition No. 91155445
	)	Opposition No. 91155380
Applicant.	)	Opposition No. 91155410

CONSENTED MOTION TO CONSOLIDATE PROCEEDINGS AND TO EXTEND DISCOVERY AND TRIAL DATES

Sara Lee DE/N.V. ("Applicant"), with the consent of Opposer Pumpernickel Associates, LLC, moves to (a) consolidate the nine above-captioned proceedings for purposes of trial and pre-trial proceedings and (b) extend discovery and all trial dates in the consolidated proceedings.

Applicant has applied for federal registration of the nine marks that are summarized below ("Applicant's Marks"), all of which contain the design of a lady's head (the "Lady's Head Design") and are for use in connection with coffee, tea, cocoa, and other beverages and machines used in the preparation of these beverages.

Mark	Goods	Serial Number
Color is claimed as a part of the mark	(IC 030) Coffee, coffee in filter packing, coffee-based beverages, extracts for use as flavorings, namely coffee extract, instant coffee, grain or chicory based coffee substitutes, mixtures of coffee grain or chicory based coffee substitutes; tea, tea-based beverages, extracts for use as flavorings, namely tea extracts, tea substitutes; cocoa, cocoa-based beverages, chocolate and chocolate extracts in powder, granulated of liquid form; sugar	76/296,792

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Mark	Goods	Serial Number
	(IC 009) Automatons for the preparation and distribution of hot and cold beverages; coffee and tea vending machines	78/077,322
Color is claimed as a part of the mark.	(IC 011) Electric apparatus for the preparation and distribution of hot and cold beverages, namely coffee, tea and cocoa brewing and dispensing machines, and hot and cold water dispensing machines	76/296,291
	(IC 030) Coffee, also coffee in filter packing, coffee-based beverages, coffee extract, instant coffee, coffee substitutes, mixtures of coffee and coffee substitutes; tea, tea-based beverages, tea extracts, tea substitutes; cocoa, cocoa-based beverages, chocolate and chocolate extracts in powder, granulated of liquid form; sugar	78/077,340
	(IC 009) Automatons for the preparation and distribution of hot and cold beverages; coffee and tea vending machines	78/077,344
	(IC 011) Electric apparatus for the preparation and distribution of hot and cold beverages, namely coffee, tea and cocoa brewing and dispensing machines, and hot and cold water dispensing machines	78/077,343

Mark	Goods	Serial Number
Color is claimed as a part of the mark.	(IC 009) Automatons for the preparation and distribution of hot and cold beverages; coffee and tea vending machines	76/295,930
	(IC 011) Electric apparatus for the preparation and distribution of hot and cold beverages, namely coffee, tea and cocoa brewing and dispensing machines, and hot and cold water dispensing machines	78/077,330
	(IC 030) Coffee, also coffee in filter packing, coffee-based beverages, coffee extract, instant coffee, coffee substitutes, mixtures of coffee and coffee substitutes; tea, tea-based beverages, tea extracts, tea substitutes; cocoa, cocoa-based beverages, chocolate and chocolate extracts in powder, granulated of liquid form; sugar	78/077,335

Opposer has opposed registration of these marks on the grounds that Applicant's Marks are confusingly similar to Opposer's registered marks, which are summarized below:

Mark	Goods	Registration Number
	(IC 021) Coffee mugs and plastic drinking cups (IC 025) T-shirts (IC 029 Soups, cream cheese, vegetable and garden salads (IC 030) Bakery goods, coffee drinks and sandwiches (IC 042) Restaurant and catering services	2,341,776

Mark	Goods	Registration Number
	(IC 021) Coffee mugs and plastic drinking cups (IC 025) Clothing, namely, caps, shirts, sweat shirts, and hats	2,354,029
	(IC 021) Coffee mugs and plastic drinking cups (IC 025) Clothing, namely, caps, shirts, sweat shirts, and hats (IC 030) Bakery goods, coffee drinks and sandwiches	2,574,024
	(IC 029) Cream cheese (IC 042) Restaurant and catering services	2,288,314
	(IC 029) Jellies, jams, edible vegetable oils, soups, cream cheese, vegetable and garden salads (IC 030) Bakery goods, coffee drinks and sandwiches (IC 042) Restaurant and catering services	2,299,040

These oppositions involve common questions of law and fact. The Lady's Head Design in Applicant's Marks is substantially the same in each opposition, and Opposer is relying on the same registrations in each opposition. In view of the substantially identical alleged grounds for opposition in all nine pending proceedings, common questions of law or fact are involved in each proceeding. Therefore, pursuant to F.R.C.P. 42(a), Applicant, with the express consent of Opposer, requests that the Board approve consolidation of these proceedings.

In the event that this Consented Motion to Consolidate is granted, Applicant (again, with Opposer's express consent) requests that the discovery and testimony periods for these consolidated proceedings each be extended and set in accordance with the following dates:

Discovery period to close	December 29, 2003
30-day testimony period for party in position of plaintiff to close	March 28, 2004
30-day testimony period for party in position of defendant to close	May 27, 2004
15-day rebuttal testimony period for plaintiff to close	July 11, 2004

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE
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CERTIFICATE OF SERVICE

I do hereby certify that on this date I served a true and complete copy of the foregoing CONSENTED MOTION TO CONSOLIDATE PROCEEDINGS upon Opposer by causing a copy of the same to be deposited with the United States Postal Service, first-class mail postage prepaid, and addressed as follows:

Jeffrey J. Simon, Esquire
Husch & Eppenberger, LLC
1200 Main Street, Suite 1700
Kansas City, Missouri 64105-2100

This 27th day of August, 2003.

Laurie A. Ricci

Laurie A. Ricci, Paralegal

CERTIFICATE OF MAILING

I do hereby certify that an original and one copy of the foregoing CONSENTED MOTION TO CONSOLIDATE PROCEEDINGS is being deposited with the United States Postal Services as first-class mail in a postage prepaid envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on August 27, 2003.

Laurie A. Ricci

Laurie A. Ricci, Paralegal