

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Ryan

MAILED: November 7, 2003

Opposition No. 91153452 (parent)
Opposition No. 91155817
Opposition No. 91155941
Opposition No. 91155953
Opposition No. 91155991
Opposition No. 91156161
Opposition No. 91156326
Opposition No. 91157360

The Procter & Gamble Company

v.

Intimate Beauty Corporation
dba Victoria's Secret Beauty

Karyn K. Ryan, Interlocutory Attorney
Trademark Trial and Appeal Board:

On October 3, 2003, applicant filed a "Motion for Consolidation of Opposition Proceedings . . . upon Consent" seeking to consolidate Opposition Nos. 91153452, 91155817, 91155941, 91155953, 91155991, 91156161, 91156326, and 91157360.¹

Consolidation is discretionary with the Board, and may be ordered upon motion granted by the Board, or upon stipulation of the parties approved by the Board, or upon the Board's own

¹ Applicant improperly and prematurely filed its motion under a consolidated case caption, which has hampered the Board's matching of the motion with the proper proceeding files.

initiative. See, for example, Wright & Miller, *Federal Practice and Procedure: Civil* §2383 (1971); *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense which may be gained from consolidation, against any prejudice or inconvenience which may be caused thereby. See, for example, *World Hockey Ass'n v. Tudor Metal Products Corp.*, 185 USPQ 246 (TTAB 1975). When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. See Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991).

Applicant's motion is well-taken. Answers have been filed in each case and, as of the date of signature on applicant's motion, discovery was open in each case. Further, we note that the marks at issue in each case include the SECRET term. Moreover, the subject cases involve the same parties and common issues of law and fact. Consolidation therefore is in the interests of judicial economy and the orderly presentation and decision of these cases.

Accordingly, applicant's motion to consolidate is **granted**. Opposition Nos. 91153452, 91155817, 91155941, 91155953, 91155991, 91156161, 91156326, and 91157360 are hereby consolidated. See Fed. R. Civ. P. 42(a).

The cases shall retain their separate characters, but may be presented and decided on the same record and briefs. Opposition No. 91153452 is hereby designated the "parent" case in which all papers pertaining to Opposition Nos. 91155817, 91155941, 91155953, 91155991, 91156161, 91156326, and 91157360 shall be filed. However, all proceeding numbers must be included in the caption of every paper filed. See the caption of this order as an example.

The Board has designated Lynda E. Roesch of Dinsmore & Shohl LLP as lead counsel to whom the Board may send correspondence intended for the applicant in these consolidated proceedings. Ms. Roesch is therefore responsible for making and distributing copies of all Board correspondence to her associate counsel Vanessa Nichols whom we observe is counsel of record in Opposition Nos. 91155953 and 91155991,² and for coordinating the conduct of all counsel for applicant in this case. If applicant intends that another attorney act as lead counsel and that correspondence be received by another attorney on behalf of applicant in these consolidated proceedings, the Board must be so informed in writing and a proper written change of address must be submitted. Trademark Rule 2.18.

² As a courtesy, the Board is forwarding a copy of this order to Ms. Nichols; notwithstanding, the Board will not undertake duplicate correspondence to applicant in these consolidated proceedings in the future.

The close of discovery and trial dates in these consolidated proceedings are **reset**, as indicated below.³

DISCOVERY PERIOD TO CLOSE: **May 30, 2004**

30-day testimony period for party in the position of plaintiff to close: **August 28, 2004**

30-day testimony period for party in the position of the defendant to close: **October 27, 2004**

15-day rebuttal period for party in the position of the plaintiff to close: **December 11, 2004**

IN EACH INSTANCE, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within **thirty days** after completion of the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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Notice Regarding TTAB Electronic Resources and New Rules

- TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.
- Parties should also be aware of changes in the rules affecting trademark matters, including rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes are available at www.uspto.gov.
- The second edition of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at www.uspto.gov/web/offices/dcom/ttab/tbmp/.

³ Note, this schedule does not exactly match the dates set forth in applicant's October 3, 2003 motion. If the parties seek any further extensions to the trial schedule in this case, any future consented motions to extend should set forth all dates in the format shown in this order. See Trademark Rule 2.121(d).