

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

Puppuccino, Inc.

Opposer,

v.

Thorlakson, Lynette M.

Applicant.

Opposition Nos. 91164705; 91164500

Serial Nos. 78/315,477; 78/324,909;
78/324,924

Marks: PUPPUCCINO; CATPUCCINO;
CHIRPUCCINO

APPLICANT'S OPPOSITION TO MOTION TO CONSOLIDATE

I. Introduction.

Opposer has filed two Oppositions before the Trademark Trial and Appeal Board, Opposition Nos. 91164500 and 91164705. Opposer now seeks to consolidate the Oppositions. Applicant believes it will be prejudiced by a consolidation and thus opposes the same.

II. Applicant Opposes the Consolidation of the Oppositions.

Although Rule 42(a) empowers the court to order consolidation for pretrial purposes, such extraordinary relief should be granted only under compelling circumstances and when attempts to seek other, more conventional, avenues of relief have been exhausted. *MacAlister v Guterma*, 263 F.2d 65 (2d Cir. 1958); *State Mut. Life Assurance Co. v Peat, Marwick, Mitchell & Co.*, 49 F.R.D. 202 (D.N.Y. 1969).

In determining whether to order consolidation, court must first ask whether two proceedings involve common party and common issues of fact or law, and once this determination has been made, court has broad discretion in weighing costs and benefits of consolidation to decide whether that procedure is appropriate; if threshold questions are resolved in favor of consolidation, it will usually be allowed unless opposing party can demonstrate prejudice. *Willard v Town of Lunenburg*, 202 F.R.D. 57 (D. Mass. 2001).



Party moving for consolidation bears burden of demonstrating commonality of factual and legal issues in actions it seeks to consolidate. *BD v DeBuono*, 193 F.R.D. 117 (D.N.Y. 2000).

The threshold question the TTAB must find in the affirmative is whether the two proceedings involve a common party and common issues of fact or law. In the instant case, the Opposer is attempting to bootstrap the facts associated with a likelihood of confusion analysis of Applicant's and Opposer's use of the mark PUPPUCCINO with the likelihood of confusion analysis of Applicant's other marks CATPUCCINO and CHIRPUCCINO. Since the likelihood of confusion analysis vis-à-vis the CATPUCCINO and CHIRPUCCINO marks will be quite disparate from the analysis of the dispute related to the PUPPUCCINO mark, the Applicant believes it will be prejudiced caused by unnecessary confusion by a consolidation of the matters.

III. Conclusion

Applicant opposes the Opposer's Motion To Consolidate Opposition Proceedings Nos. 91164500 and 91164705 and respectfully asks the Trademark Trial and Appeal Board to deny the Motion.

DATED this 13th day of July, 2005.

BLACK, LOWE & GRAHAM, ^{PLLC}



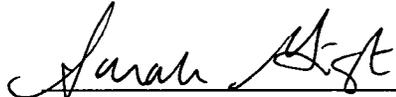
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July 2005, a true copy of the foregoing OPPOSITION TO OPPOSER'S MOTION TO CONSOLIDATE was served via U.S Mail, and facsimile addressed as follows:

Leslie C. Adams, Esq.
The Intellect Law Group
2400 SE Federal Highway, Suite 340
Stuart, FL 34994
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EXECUTED on July 13, 2005.



Sarah Gist