

ESTTA Tracking number: **ESTTA174996**

Filing date: **11/15/2007**

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

Proceeding.	91174291
Applicant	Plaintiff Penthouse Digital Media Productions Inc.
Other Party	Defendant Adrienne Diane Jacoby

Motion for Suspension in View of Civil Proceeding With Consent

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, Penthouse Digital Media Productions Inc. hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

Penthouse Digital Media Productions Inc. has secured the express consent of all other parties to this proceeding for the suspension requested herein.

Penthouse Digital Media Productions Inc. has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,
/ Dawn M. Aufenanger/
Dawn M. Aufenanger
daufenanger@pmgi.com, jbressler@pmgi.com
spplunkett@yahoo.com
11/15/2007

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

In the Matter of U.S. Trademark Application No. 76/653,901
For the Mark JILL KELLY
Date Filed: January 23, 2006

PENTHOUSE DIGITAL MEDIA PRODUCTIONS, INC.,

Opposer,

v.

Opposition No.: 91174291

ADRIANNE DIANE JACOBY,

Applicant.

**JOINT MOTION AND STIPULATION TO CONSOLIDATE,
SUSPEND PROCEEDINGS and RESET THE TIME
PERIODS FOR DISCOVERY and TESTIMONY**

Opposer, Penthouse Digital Media Productions, Inc. ("PDMP"), a New York corporation, having an address c/o Penthouse Media Group Inc., 6800 Broken Sound Parkway NW, Suite 100, Boca Raton, FL 33487, joined by Applicant, Adrienne Diane Jacoby, by and through the undersigned counsel, hereby moves the Board to enter an Order consolidating the proceedings, suspending the opposition, and resetting the time for discovery and testimony in Opposition numbers 91174291 and 91174292 (collectively, the "Oppositions") to Application numbers 76/653,901 and 76/653,902, respectively, filed on January 23, 2006 for the claimed mark JILL KELLY (collectively, the "Applications").

In support thereof and as grounds therefor, the parties state the following:

CONSOLIDATION

1. Pursuant to Federal Rule of Civil Procedure 42(a) and the TBMP § 511, the parties request consolidation of Opposition proceeding numbers 91174291 and 91174292.

2. The Oppositions involve common questions of law and fact and set forth substantially identical allegations and arguments for opposition of the Applications¹, which seek to register the same mark for related goods and services (the '901 Application claims "entertainment – adult motion picture production," and the '902 Application seeks "entertainment services, namely, personal appearances, autograph signings and dance performances by an adult entertainment celebrity").

3. Due to their nearly identical subject matter, the discovery, testimony, transcripts and other such evidence that may be presented and proffered in each of the Oppositions would substantially overlap.

4. Consolidation of the Oppositions would save a substantial amount of time, effort and expense and facilitate judicial economy and consistency. The Oppositions have substantially the same procedural posture.

5. Neither party, nor the proceedings themselves, will be prejudiced by the consolidation of the Oppositions.

SUSPENSION OF OPPOSITION PROCEEDINGS

6. Pursuant to 37 C.F.R. §§ 2.117(a) and (c) and the TBMP §§ 510.02(a) and 510.03(a), the parties request a suspension of the Oppositions pending the adjudication of Applicant's Complaint for (1) Declaratory Relief to Quiet Title and (2) Injunctive Relief, in the matter captioned *Adrienne Moore Jacoby, an individual, also known as Jill Kelly v. Penthouse Digital Media Productions, Inc. and Does 1 through 10, inclusive*, filed in the pending bankruptcy matter captioned *In re Jill Kelly Productions, Inc.*, currently pending before the United States Bankruptcy Court, Central District of California, San Fernando Valley Division (the "Court"), the Honorable Kathleen Thompson presiding

¹ *S. Industries Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293, 1297 (TTAB 1997) (consolidation granted where both proceedings involved the same mark and virtually identical pleadings). See also *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);

(Case No. SV 05-15389 KT). Applicant filed and served her Complaint on or about October 24, 2006. A true copy of the Complaint is attached hereto as Exhibit "A".

7. By way of background, Opposer's ultimate corporate parent, Penthouse Media Group Inc. ("PMGI"), outbid all other suitors in an auction conducted by the Court on April 17, 2006 to purchase substantially all of the assets of the debtor estate of Jill Kelly Productions, Inc. ("JKP Inc."), including but not limited to all right, title and interest to all of its "trademarks, service marks, brand names, certification marks, collective marks, d/b/a's, Internet domain names, logos, symbols, trade dress, assumed names, fictitious names, trade names and other indicial of origin, all applications and registrations for the foregoing and all goodwill associated therewith and symbolized thereby [...]." See Notice of Opposition Exhibit A (the Sale Order) at ¶9(a). In September 2006, Opposer purchased all such assets from JKP Inc. for approximately \$1.765 million and continues to own them. Opposer respectfully refers the Board to Opposer's Notices of Opposition, in which Opposer has set forth circumstances and details of Opposer's acquisition of JKP Inc.'s rights and assets.

8. In her Complaint, Applicant alleges that she is the owner of the trademark JILL KELLY (Complaint paragraph 9) and seeks a declaration from the Court that she is the owner of such trademarks (Complaint paragraph 13).

9. Applicant also filed and served on or about October 24, 2006 her Ex Parte Application for Temporary Restraining Order and Order to Show Cause for a Preliminary Injunction against Opposer to cause Opposer to cease and desist from seeking the turn-over, transmittal or delivery or gaining possession of any assets alleged to be owned by Plaintiff, including but not limited to the JILL KELLY trademarks (the "TRO Motion"). A true copy of the TRO Motion (excluding the supporting declarations and memorandum of law) is attached as Exhibit "B". In connection with the parties' ongoing efforts to settle amicably the issues raised by the Complaint and the TRO Motion, the Court has granted continuances of the TRO Motion upon stipulation of the parties until January 9, 2008. The

parties continue to negotiate settlement and exchange written documentation drafts memorializing same.

10. Because the Court will adjudicate Applicant's ownership claim to the JILL KELLY trademark, the parties hereby request suspension of the Opposition proceedings until such time as the Court (and any appeals court) adjudicates fully the Complaint and the TRO Motion. Suspension of the proceedings fosters judicial economy and helps ensure that the ownership issue is not adjudicated differently by different tribunals. Suspension also helps the parties avoid duplicative efforts and costs. Indeed, as it is the parties' expectation that the Oppositions will be resolved by settlement or by the Court, avoiding the need to litigate before the Board, suspension is appropriate in this instance.²

11. Indeed, the Court's Sale Order provides that "[t]his Court has *exclusive* jurisdiction to implement and enforce the terms and provisions of this Order, including but not limited to retaining jurisdiction to (a) compel delivery of the Assets to Purchaser, [and] (b) determine the scope of the Assets purchased by Purchaser [...]." Sale Order at ¶19 (emphasis added). As such, the Court has required the parties to submit the issues raised by these Opposition proceedings before it.

12. The parties seek to suspend the Opposition proceedings only until such time as the Court adjudicates the matter (in which case the parties expect these Opposition proceedings to be mooted). In addition, neither party believes that suspension will prejudice the parties or these Opposition proceedings, or that suspension would cause irreparable harm or loss of evidence or witnesses.

RESETTING DISCOVERY AND TESTIMONY PERIODS

13. Pursuant to 37 C.F.R. §§ 2.120(a) and 2.120(a)(1) and the TBMP §§ 509.01(b)(1) and 510.03(b), the parties request that the discovery and testimony periods be reset upon resumption of the

² See *Instruments SA Inc. v. ASI Instruments Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999) (it may be the safest course of action for parties engaged in settlement to file a consented motion or stipulation to suspend proceedings).

Opposition proceedings should such proceedings not be mooted by an adjudication by the Court.³ In the unlikely event that these Opposition proceedings will be necessary to determine the issues raised thereby, the parties wish to preserve their rights and opportunity to conduct full discovery and submit testimony

14. This request to reset the time periods for discovery and testimony is not necessitated by either party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted for discovery and testimony. The parties have engaged and continue to engage in substantive, meaningful, written settlement negotiations and the parties have reasonably relied on settlement proposals and attempted negotiations by the other.

15. Neither party, nor these Opposition proceedings, will be prejudiced by resetting the discovery and testimony periods.

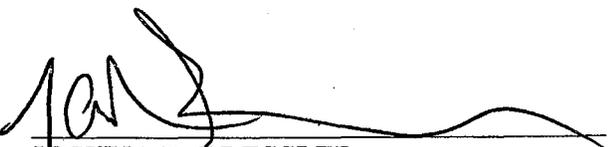
WHEREFORE, the Opposer, Penthouse Digital Media Productions, Inc., joined by the Applicant, Adrienne Diane Jacoby, hereby request this Honorable Board to grant the foregoing Motion to Consolidate, Suspend Proceedings and Reset the Time for Discovery and Testimony and any other such relief this Honorable Board deems necessary and proper.

Dated this _____ day of October 2007.

Counsel for Applicant

SAMUEL P. PLUNKETT
Attorney for Adrienne Moore Jacoby
264 South La Cienega Blvd.
1106
Beverly Hills, CA 90211-3302
Telephone: (310) 218-8340
Facsimile: (310) 277-0711

Counsel for Opposer



JOSHUA R. BRESSLER
General Counsel
Penthouse Digital Media Productions Inc.
6800 Broken Sound Parkway NW, Suite 100
Boca Raton, FL 33487
Telephone: (561) 912-7030
Facsimile: (561) 912-1747

³ The original discovery and testimony periods are set as follows: discovery period to open 12/20/06; discovery period to close 6/18/07; 30-day testimony period for party in position of plaintiff to close 9/16/07; 30-day testimony period for party in position of defendant to close 11/15/07; 15-day rebuttal testimony period for plaintiff to close 12/30/07.

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Dated this 25 day of October 2007.

Counsel for Applicant

Counsel for Opposer

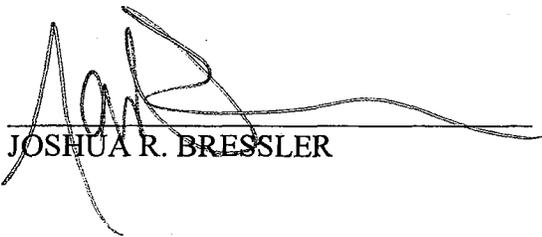

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CERTIFICATE OF SERVICE

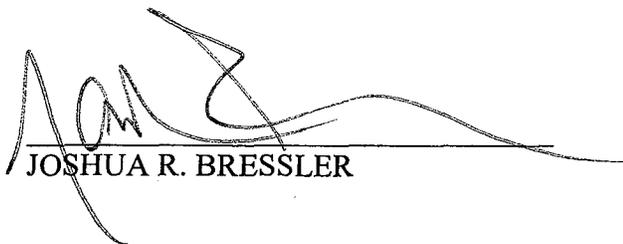
I hereby certify that a true and complete copy of the foregoing Joint Motion and Stipulation to Consolidate Oppositions, Suspend Proceedings and Reset the Time Periods for Discovery and Testimony filed in connection with Opposition No. 91174291 has been served on Samuel P. Plunkett, Esq., attorney for Applicant, Adrienne Moore Jacoby, by mailing said copy on this 29th day of October 2007, via U.S. first-class mail, postage prepaid, to Samuel P. Plunkett, Esq., 264 South La Cienega Blvd. #1106, Beverly Hills, CA 90211-3302 and also by transmitting via e-mail at spplunkett@yahoo.com.


JOSHUA R. BRESSLER

CERTIFICATE OF MAILING

I hereby certify that the foregoing Joint Motion and Stipulation to Consolidate Oppositions, Suspend Proceedings and Reset the Time Periods for Discovery and Testimony filed in connection with Opposition No. 91174291 is being deposited with the United States Postal Service on this 29th day of October 2007, as first-class mail, postage prepaid, in an envelope addressed to:

U.S. Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Arlington, Virginia 22313-1451


JOSHUA R. BRESSLER

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

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For the Mark JILL KELLY
Date Filed: January 23, 2006

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v.

Opposition No.: 91174292

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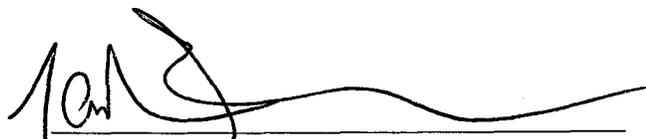
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Dated this _____ day of October 2007.

Counsel for Applicant

Counsel for Opposer

SAMUEL P. PLUNKETT
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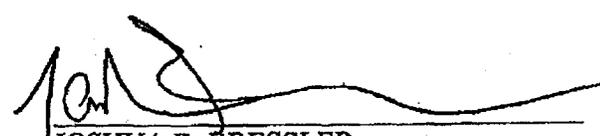
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Counsel for Applicant

Counsel for Opposer

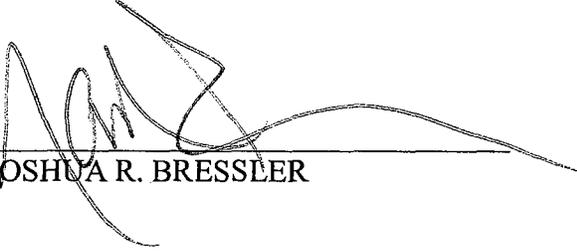

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Beverly Hills, CA 90211-3302
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Joint Motion and Stipulation to Consolidate Oppositions, Suspend Proceedings and Reset the Time Periods for Discovery and Testimony filed in connection with Opposition No. 91174292 has been served on Samuel P. Plunkett, Esq., attorney for Applicant, Adrienne Moore Jacoby, by mailing said copy on this 29th day of October 2007, via U.S. first-class mail, postage prepaid, to Samuel P. Plunkett, Esq., 264 South La Cienega Blvd. #1106, Beverly Hills, CA 90211-3302 and also by transmitting via e-mail at spplunkett@yahoo.com.

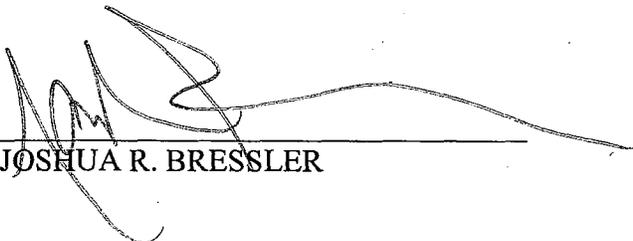


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CERTIFICATE OF MAILING

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U.S. Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Arlington, Virginia 22313-1451



JOSHUA R. BRESSLER