

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451**

Lykos

Mailed: March 26, 2008

Opposition Nos. 91176716
91176717

CBT Supply Inc., and
Jeffrey Korber

v.

Peter J. Stengel

(as consolidated)

Angela Lykos, Interlocutory Attorney

I. Consolidation

By this order, Opposition Nos. 91176716 and 91176717 are hereby consolidated. Consequently, the parties' future submissions should be captioned in the above manner.

When cases involving common questions of law or facts are pending before the Board, the Board may order, upon its own initiative or upon motion, the consolidation of the cases. See Fed. R. Civ. P. 42(a) and TBMP § 511 and authorities cited therein.

A review of the pleadings in the above identified opposition proceedings indicates that the parties are the

same, and the proceedings involved substantially identical questions of fact and law. For these reasons, these proceedings may be presented on the same record without appreciable inconvenience or confusion. Moreover, the consolidation would be equally advantageous to those parties in the avoidance of duplication of effort, loss of time, and the extra expense involved in conducting the proceedings individually.

The consolidated cases may be presented on the same record and briefs. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989) and *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993). The Board file will be maintained in Opposition No. 91176716 as the "parent" case. As a general rule, only a single copy of any paper or motion should be filed herein; but that copy should bear all proceeding numbers in its caption. Exceptions to the general rule involve stipulated extensions of the discovery and trial dates, see Trademark Rule 2.121(d), and briefs on the case, see Trademark Rule 2.128.

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues

raised by the respective pleadings; a copy of the decision shall be placed in each proceeding filed.

The parties are further advised that they are to inform the Board if any subsequent oppositions or cancellations are instituted which involve the same parties in the same issues.

II. Suspension

On August 8, 2007, opposers filed a motion to suspend proceedings pending the disposition of (1) federal civil litigation involving the parties in the U.S. District Court of Maryland,¹ and (2) state court litigation in the Circuit Court for Howard County, Maryland.² In support of its motion to suspend, opposers have submitted copies of the relevant pleadings in the federal suit but not in the state suit.

Applicant filed a response thereto on August 27, 2007, granting its consent to suspend proceedings pending the outcome of the federal civil action but objecting to suspension of the case based on the state court action.

Insofar as applicant consents to suspension of the proceedings based on the federal litigation, proceedings herein are suspended pending disposition of the federal

¹ Case No. 1:05-CV-03456 MJG.

civil action between the parties. Within twenty days after the final determination of the federal civil action, the interested party should notify the Board so that this case may be called up for appropriate action.³

Trademark Rule 2.127(a) provides that the Board may in its discretion suspend proceedings pending the outcome of a civil action involving the parties in state court. See e.g., *Argo & Co. v. Carpetsheen Manufacturing, Inc.*, 187 USPQ 366 (TTAB 1975) (state court action to determine ownership of applicant's mark and authority of applicant to file application). However, because opposers failed to submit the pleadings in the state court litigation, the Board is unable to make a determination regarding opposers' motion to suspend on the basis of the Maryland state action at this time. In view thereof, opposers are allowed until TWENTY-FIVE (25) DAYS from the mailing date of this order to submit the pleadings in the state court litigation, failing which opposers' motion to suspend based on the civil action involving the parties in Maryland state court

² Case No. 13-C-05-064158.

³ During the suspension period the Board should be notified of any address changes for the parties or their attorneys.

A "final determination" refers to the expiration of an appeal period with no appeal being taken, or the exhaustion of the appeal process available. See TBMP § 510.02(b) (2d ed. rev. 2004).

will be denied. Proceedings are otherwise suspended.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>

http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>