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

Proceeding	91179491
Party	Defendant Cosmetic Warriors Limited
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Submission	Motion to Consolidate
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Date	04/18/2008
Attachments	LUSH 04 18 2008.pdf (5 pages)(138699 bytes)

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

In the Matter of Trademark Application Serial No. 78/747180
Filed Nov. 4, 2005
For the Mark LUSH
Published in the Official Gazette (Trademarks) on Aug. 14, 2007

_____)	
Cygen Cosmeceuticals, Inc.,)	
)	Opposition No. 91179491
Opposer,)	
)	AGREED MOTION TO
v.)	CONSOLIDATE
)	
Cosmetic Warriors Limited.)	
)	
)	
Applicant.)	
_____)	

AGREED MOTION TO CONSOLIDATE

The parties hereby move the Board to consolidate the present Opposition No. 91179491 with Opposition No. 91178356.

Pursuant to TBMP § 551, when cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. *Ritchie v. Simpson*, 41 USPQ2d 1859 (TTAB 1996), rev'd on other grounds, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999) (cases consolidated despite variations in marks and goods); *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993) (opposition and cancellation consolidated). 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 that may be caused thereby. Consolidation may be ordered upon stipulation of the parties approved by the Board.

Both proceedings in this case involve the same parties, namely, Cygen Cosmeceuticals, Inc. (herein after “Cygen”) and Cosmetic Warriors Limited (herein after “Cosmetic Warriors”).

The proceedings involve common questions of law and fact. The mark at issue in Opposition No. 91179491, Application Serial No. 78/747180, is LUSH (in connection with a variety of beauty services in international class 44), owned by Cosmetic Warriors Limited. In this Opposition, Cygen asserts that Cosmetic Warriors’ LUSH mark is merely descriptive, and thus, not registrable on the Principal Register without a showing of distinctiveness. The mark at issue in Opposition No. 91178356, Application Serial No. 78/846213 (LUSHBUST for topical herbal cream for firming and enhancing breasts), is owned by Cygen. Cosmetic Warriors has opposed the registration of Cygen’s LUSHBUST mark on the basis that the mark is likely to be confused with Cosmetic Warriors’ family of LUSH marks (for cosmetics, skincare preparations, and related products and services), all registered or approved for publication on the Principal Register without a showing of acquired distinctiveness. In Opposition No. 91178356, Cygen asserts various affirmative defenses, including, without limitation, that there is no confusion between the respective marks and Cosmetic Warriors’ LUSH marks are merely descriptive and thus, are not enforceable against Cygen. Furthermore, Cygen has filed a counterclaim, which Cosmetic Warriors has answered, alleging that Cosmetic Warriors’ LUSH registrations be cancelled based on descriptiveness. Therefore, both cases involve the issue of descriptiveness.

Opposition No. 91179491 and Opposition No. 91178356 involve common questions of law and fact. Therefore, consolidation of these proceedings will save time, effort, and expense for both the parties and the Board.

The parties request that the Board reset the trial dates for the consolidated proceeding and adopt the present schedule in Opposition No. 91179491, the first instituted case. The schedule for the consolidated proceeding would therefore be as follows:

THE PERIOD FOR DISCOVERY TO CLOSE: 8/1/08

30-day testimony period for party in position of plaintiff (Cosmetic Warriors”) in the opposition to close: 10/30/08

30-day testimony period for party in position of defendant (Cygen) in the opposition and plaintiff in the counterclaim to close: 12/29/08

30-day rebuttal testimony period for plaintiff in the opposition and defendant in the counterclaim to close: 2/27/09

15-day rebuttal testimony period for plaintiff in the counterclaim to close: 4/13/09

Briefs are due as follows:

Brief for plaintiff in the opposition shall be due: 6/12/09

Brief for defendant in the opposition and plaintiff in the counterclaim shall be due: 7/12/09

Brief for defendant in the counterclaim and reply brief, if any, for plaintiff in the opposition shall be due: 8/11/09

Reply brief, if any, for plaintiff in the counterclaim shall be due: 8/26/09

By Agreement of the Following, effective April 18, 2008

SANTUCCI, PRIORE & LONG, LLP

MERCHANT & GOULD

s:/Michael I. Santucci/
Michael I. Santucci
Attorney for Cygen Cosmeceuticals, Inc.


John A. Clifford
Rachel Zimmerman
Danielle I. Mattessich
Attorneys for Cosmetic Warriors Limited

BY ORDER OF THE BOARD, effective _____.

(Signature)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **AGREED MOTION TO CONSOLIDATE** was served upon the attorneys for Applicant:

Michael Santucci
SANTUCCI, PRIORE & LONG, LLP
500 West Cypress Creek Road
Suite 500
Pinnacle Building
Fort Lauderdale, Florida 33309

by mailing the same via first class mail on the 18th day of April, 2008.



Danielle I. Mattessich