

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

EJW

Mailed: October 5, 2010

Opposition No. 91190565
Opposition No. 91190568
Opposition No. 91192067

Knowledge Learning
Corporation

v.

Children's Learning
Adventure Licensing, LLC

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

Proceedings Consolidated

It has come to the attention of the Board that Opposition Nos. 91190565, 91190568 and 91192067 involve the same parties and common questions of law and fact.¹ By way of example, all three oppositions are based on opposer's claim of priority and likelihood of confusion; applicant has filed counterclaims in each proceeding in which it asserts that opposer's registered marks are "merely descriptive"; and the parties in each proceeding are identical and are represented by the same counsel.

Consolidation is discretionary with the Board, and may

¹ The Board also notes that issue has been joined in these proceedings.

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be ordered upon motion granted by the Board, or upon stipulation of the parties approved by the Board, or upon the Board's own initiative. See, e.g., 9A Wright & Miller, Fed. Prac. & Proc. Civ.2d § 2383 (2008); and *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991) (Board's initiative).

In view of the foregoing, the Board finds that it is appropriate to consolidate these proceedings pursuant to Fed. R. Civ. P. 42(a). See TBMP § 511 (2d ed. rev. 2004).

Accordingly, the above-noted opposition proceedings are hereby **consolidated** and may be presented on the same record and briefs. The Board file for the consolidated proceedings will be maintained in Opposition No. **91190565** as the "parent" case. The parties should no longer file separate papers in connection with each proceeding. Only a single copy of each paper should be filed by the parties and each paper should bear the case caption as set forth above.²

The parties are reminded that consolidated cases do not lose their separate identity because of consolidation. Each proceeding retains its separate character and requires entry of a separate judgment. See Wright & Miller, 9A Fed. Prac. & Proc. Civ. § 2382 (3d ed. 2009).

² The parties should promptly inform the Board in writing of any other related *inter partes* proceedings. See Fed. R. Civ. P. 42(a).

Trial Dates Reset

In accordance with Board practice, discovery, disclosure deadlines and trial dates would normally be reset to conform to the dates previously set in the most recently filed of the proceedings that are being consolidated, *i.e.*, Opposition No. 91192067. However, on review, it is apparent that none of the trial schedules in the now consolidated proceedings is correct. Specifically, pursuant to the Board's suspension orders mailed in the three proceedings on January 15, 2010 in Opp. No. 91190565, February 4, 2010 in Opp. No. 91190568, and January 14, 2010 in Opp. No. 91192067, initial disclosures were due by March 30, 2010, April 25, 2010, and March 31, 2010, respectively. Thus, when the electronically-submitted consented motions to suspend were filed in each proceeding on March 4, 2010 via the Board's Electronic System for Trademark Trials and Appeals (ESTTA), and the initial disclosures due date for each motion was set as "closed," each motion was incorrect because there was time remaining to serve the initial disclosures in each proceeding.³ This error in the filing

³ Both parties are reminded of the following advisory set forth on the Board's website at <http://estta.uspto.gov/filing-type.jsp>:

Parties may use the ESTTA "Consent Motions (opposition or cancellation)" filing option regardless of whether the proceeding commenced before November 1, 2007 (prior Rules), or on/after November 1, 2007 ("New" or "Amended" Rules). However, to prevent the ESTTA system from generating an order containing a deadline or schedule contrary to the parties'

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of each motion was perpetuated by the ESTTA system, which, under most circumstances, automatically grants consented motions to extend time or to suspend proceedings as submitted. As a result of the foregoing, the subsequent consented motions to suspend filed in each proceeding on April 30, 2010 and on August 2, 2010, and the orders of the same date granting those motions, were likewise based on incorrect data that originated from the March 4, 2010 motions. Thus, insofar as the trial schedules in each proceeding were reset in those electronically issued orders to indicate, *inter alia*,⁴ that the period for serving initial disclosures was "closed", the Board's orders mailed on March 4, 2010, April 30, 2010 and on August 2, 2010, were incorrect.

Accordingly, to the extent that the March 4, 2010, April 30, 2010 and on August 2, 2010 orders granted incorrect trial schedules set forth in the parties' consented motions, those orders are hereby **vacated**. However, to be clear, these consolidated proceedings were suspended through October 1, 2010, and resumed on **October 2, 2010**.

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(Updated 11/20/2008).

⁴ For instance, the August 2, 2010 order issued in Opp. No. 91190565 did not reset a schedule to include the counterclaims in that proceeding.

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Nonetheless, in view of the multiple scheduling errors in the above-referenced motions and orders, the Board resets the initial disclosures due date for these consolidated proceedings. Additionally, all other discovery period, disclosure due dates and trial dates are hereby reset commensurate with the reset initial disclosures due date, as shown in the following trial schedule:

Initial Disclosures Due	November 4, 2010
Expert Disclosures Due	March 4, 2011
Discovery Closes	April 3, 2011
Plaintiff's Pretrial Disclosures	May 18, 2011
30-day testimony period for plaintiff's testimony to close	July 2, 2011
Defendant/Counterclaim Plaintiff's Pretrial Disclosures	July 17, 2011
30-day testimony period for defendant and plaintiff in the counterclaim to close	August 31, 2011
Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due	September 15, 2011
30-day testimony period for defendant in the counterclaim and rebuttal testimony for plaintiff to close	October 30, 2011
Counterclaim Plaintiff's Rebuttal Disclosures Due	November 14, 2011
15-day rebuttal period for plaintiff in the counterclaim to close	December 14, 2011
Brief for plaintiff due	February 12, 2012
Brief for defendant and plaintiff in the counterclaim due	March 13, 2012
Brief for defendant in the counterclaim and reply brief, if any, for plaintiff due	April 12, 2012
Reply brief, if any, for plaintiff in the counterclaim due	April 27, 2012

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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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