

ESTTA Tracking number: **ESTTA451256**

Filing date: **01/13/2012**

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

Proceeding	91192317
Party	Defendant RTS Consultants, LLC
Correspondence Address	KAREN K. HAMMOND PORTER WRIGHT MORRIS & ARTHUR LLP 41 SOUTH HIGH STREET COLUMBUS, OH 43215 UNITED STATES rmorgan@porterwright.com, ipdocket@porterwright.com
Submission	Other Motions/Papers
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Date	01/13/2012
Attachments	2012 01 13 -- RTS's Notice of Filing Motion to Consolidate.pdf (9 pages)(64504 bytes)

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

William A. Klapperman,)	
)	
)	
Opposer,)	
v.)	Opposition No. 91192317
)	
RTS Consultants, LLC,)	
)	
Applicant.)	

APPLICANT’S NOTICE OF FILING MOTION TO CONSOLIDATE

Applicant RTS Consultants, LLC (“RTS”) provides notice that, on January 13, 2012, it filed in Opposition No. 91190328 a motion to consolidate the following proceedings:

1. *The Original Hollywood Brown Derby, Ltd. v. RTS Consultants, LLC*, Opposition No. 91190328.
2. *Mary E. Byrd v. RTS Consultants, LLC*, Opposition No. 91192673
3. *William A. Klapperman v. RTS Consultants, LLC*, Opposition No. 91192307
4. *William A. Klapperman v. RTS Consultants, LLC*, Opposition No. 91192317

A copy of the motion to consolidate is attached.

RTS CONSULTANTS, LLC

Date: January 13, 2012

By: s/Daniel B. Miller

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*Attorneys for Applicant
RTS Consultants, LLC*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPLICANT'S NOTICE OF FILING MOTION TO CONSOLIDATE was mailed by first-class mail, postage pre-paid, on this 13th day of January, 2012, to:

Dax Alvarez, Esq.
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12400 Wilshire Blvd.
Seventh Floor
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Attorney for Opposer William A. Klapperman

s/ Daniel B. Miller

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BRIEF IN SUPPORT

Four separate opposition proceedings are currently pending before the Trademark Trial and Appeal Board naming RTS Consultants, LLC (“RTS”) as a defendant. They are:

1. *The Original Hollywood Brown Derby, Ltd. v. RTS Consultants, LLC*, Opposition No. 91190328.
2. *Mary E. Byrd v. RTS Consultants, LLC*, Opposition No. 91192673
3. *William A. Klapperman v. RTS Consultants, LLC*, Opposition No. 91192307
4. *William A. Klapperman v. RTS Consultants, LLC*, Opposition No. 91192317

These four proceedings involve common questions of fact and law. They are all based on the same issue: whether RTS should be able to register BROWN DERBY and HOLLYWOOD BROWN DERBY for use with restaurant services.

In addition, the four oppositions allege common facts with respect to the Opposers’ purported rights in the BROWN DERBY and HOLLYWOOD BROWN DERBY marks. In Opposition Nos. 91192307 and 91192317, William A. Klapperman alleges rights arising from his and his predecessors’ use of the marks, originating with restaurants opened in Hollywood, California, during the 1920s. Oppositions Nos. 91190328 and 91192673 are brought by Mary E. Byrd,¹ who alleges a licensee from Mr. Klapperman’s predecessor, Walter P. Scharfe. Like Mr. Klapperman’s oppositions, Ms. Byrd’s oppositions are based primarily on Mr. Klapperman’s predecessors’ use of the marks going back to restaurants in Hollywood in the 1920s.

Consolidation of the proceedings is appropriate given these common questions of fact and law. Under TBMP § 511, the Board may order consolidation to avoid unnecessary costs and to allow the parties to save time, effort, and expense. Consolidation of the four proceedings

against RTS will have exactly that effect because the parties – not just RTS, but the Opposers as well – will be able to avoid duplicitous efforts. They will also be able to present evidence on one record, as opposed to presenting evidence from separate records developed one after another.

Consolidation also will not prejudice or otherwise inconvenience either of the Opposers because, as discussed above, they too would benefit from having the proceedings consolidated. As Ms. Byrd and Mr. Klapperman are each prosecuting two oppositions against RTS, consolidation will save them time and expense that they would otherwise incur by maintaining multiple oppositions based on the same facts.

On January 4, 2012, the undersigned attorney for RTS contacted Ms. Byrd (who is pro se) and the attorney for Mr. Klapperman to seek their consent to this Motion to Consolidate. Ms. Byrd did not respond. Mr. Klapperman's counsel indicated that Mr. Klapperman would not consent to the motion

To effect the goal of consolidation without prejudicing or inconveniencing any party, the consolidated proceeding against RTS should employ the case schedule from Opposition No. 91192317, *William A. Klapperman v. RTS Consultants, LLC*. Although the most recently filed proceeding is Opposition No. 91192673, *Mary E. Byrd v. RTS Consultants, LLC*, adopting the case schedule from that proceeding would prejudice Mr. Klapperman and RTS by removing approximately two months from the case schedules for Mr. Klapperman's oppositions. Accordingly, the currently established case schedule for Opposition No. 91192317, *William A. Klapperman v. RTS Consultants, LLC*, should be adopted for the consolidated proceeding.

¹ Opposition No. 91190328 was filed by The Original Hollywood Brown Derby, Inc., but Ms. Byrd, president of The Original Hollywood Brown Derby, Ltd., is the real party in interest.

For each of these reasons, RTS respectfully asks that its Motion to Consolidate be granted.

Respectfully submitted,

RTS CONSULTANTS, LLC

Date: January 13, 2012

By: s/Daniel B. Miller

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*Attorneys for Applicant
RTS Consultants, LLC*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPLICANT'S MOTION TO CONSOLIDATE was mailed by first-class mail, postage pre-paid, on this 13th day of January, 2012, to:

Mary E. Byrd
President
The Original Hollywood Brown Derby, Ltd.
P.O. Box 3149
Buzzards Bay, MA 02532

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