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

Proceeding	91195328
Party	Plaintiff Hard Candy Cases, LLC
Correspondence Address	STUART J. WEST WEST & ASSOCIATES PC 1255 TREAT BLVD 3RD FLOOR WALNUT CREEK, CA 94597 UNITED STATES trademark@westpatentlaw.com
Submission	Motion to Consolidate
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Date	08/16/2010
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In re Application Serial No. : 77700557
For the Mark : HARD CANDY
Filed : 03/27/2009
Published in the Trademark
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Hard Candy Cases, LLC :
:
Opposer, : Opposition No. 91195328
:
v. :
: Opposer's Motion to Consolidate Cases and Brief in
Hard Candy, LLC : Support Thereof
:
Applicant. :
:
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Commissioner for Trademarks
P.O. Box 1451
Arlington, VA 22313-1451

MOTION TO CONSOLIDATE CASES AND BRIEF IN SUPPORT THEREOF

Opposer Hard Candy Cases, LLC hereby moves to consolidate Opposition Nos. 91195327 and 91195328 under Federal Rule of Civil Procedure 42(a) and TBMP §511, as set forth below.

Opposer has filed two Oppositions against Applicant: Opp. No. 91195327 (“HARD CANDY” in IC 009; Serial No. 77/700559) and Opp. No. 91195328 (“HARD CANDY” in IC 018; Serial No. 77/700557). For both Oppositions, Opposer cites the ground of a Lack of Bona Fide Intent-to-Use, for which the supporting facts are mostly the same.

The following factual issues are relevant and plead in both Oppositions:

1. Opposer is actively engaged in the business of manufacturing, distributing and selling computing device, mobile telephone and personal digital assistant (PDA) cases, coverings, and shells under the marks “Hard Candy” and “Hard Candy Cases.”

2. Opposer is the owner of the pending mark “Hard Candy Cases” (Serial No. 77/917,147).
3. Opposer has Standing to oppose Applicant’s mark, as Opposer reasonably believes it will likely be damaged by registration of Applicant’s mark.
4. Applicant is in the business of manufacturing, distributing and selling cosmetics.
5. Since the year 1996, Applicant has filed more than 100 federal trademark applications that have subsequently been abandoned either expressly or for failure to file a statement of use.
6. On March 27, 2009, Applicant filed 11 intent-to-use applications in multiple classes of goods ranging from “MP3 Players” (Application Serial No. 77/700,559) and “electronic action toys” (Application Serial No. 77/700,563) to “cheese flavored snacks” (Application Serial No. 77/700,562) and “beauty beverages” (Application Serial No. 77,700,564), none of which have subsequently registered.
7. Applicant has exhibited a pattern and practice of filing multiple intent-to-use trademark applications across multiple classes of goods and subsequently abandoning the underlying applications for failure to file statements of use.
8. On information and belief, Opposer reasonably believes that at the time of filing its intent-to-use application for registration on March 27, 2009, Applicant did not have a bone fide intent-to-use such mark in connection with at least some of the goods identified in its application.

All but one fact in Opposition No. 91195328 are repeated in Opposition No. 91195327. Additionally, Applicant is represented by the same counsel in both matters.

Therefore, as these marks are related, both owned by Hard Candy, LLC, and involve many of the same factual issues and supporting evidence, consolidating their respective Opposition proceedings would promote administrative efficiency and bring time and savings costs to the parties.

WHEREFORE, Opposer Hard Candy Cases, LLC hereby moves the Court to consolidate Opposition Proceedings Nos. 91195327 and 91195328.

Respectfully submitted,

/s/

Stuart J. West
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on: August 16, 2010

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Dawn Callender

Dated: August 16, 2010