

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

Winter/tlc

Mailed: November 9, 2010

Opposition No. 91195327 (Parent)
Opposition No. 91195328

Hard Candy Cases, LLC

v.

Hard Candy, LLC

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

Proceedings Consolidated

At the outset, the Board notes opposer's motion (filed August 16, 2010) in Opposition No. 91195328 to consolidate Opposition Nos. 91195327 and 91195328. In its response thereto, applicant does not contest opposer's motion. The Board also notes that answers have been filed in both proceedings, but that a motion to dismiss has been filed concurrently with applicant's answer in Opposition No. 91195327.

The Board may consolidate pending cases that involve common questions of law or fact. See Fed. R. Civ. P. 42(a); see also, *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991) and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). Consolidation will avoid

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duplication of effort concerning the factual issues and will thereby avoid unnecessary costs and delays.

Here, both notices of opposition assert a claim of lack of bona fide intention to use the mark; although Opposition No. 91195327 also includes a claim of fraud. Inasmuch as the parties to the respective proceedings are the same and the proceedings primarily involve common questions of law or fact, and the parties' counsel are the same, the Board finds that consolidation of the above-referenced proceedings is in the interest of judicial economy and is otherwise appropriate.

In view thereof, opposer's motion to consolidate is hereby granted as well taken. Fed. R. Civ. P. 42(a); Trademark Rule 2.116(a). Opposition Nos. 91195327 and 91195328 are hereby consolidated and may be presented on the same record and briefs. The record will be maintained in Opposition No. 91195327 as the "parent" case. The parties should no longer file separate papers in connection with each proceeding, but file only a single copy of each paper in the parent case. Each paper filed in these proceedings should bear the numbers of all consolidated proceedings in ascending order, and the parent case should be designated as

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the parent case by following it with "(parent)," as in the case caption set forth above.¹

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. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings and a copy of the final decision shall be placed in each proceeding file. See Wright & Miller, 9A Fed. Prac. & Proc. Civ. § 2382 (3d ed. 2009).

The parties are instructed to promptly inform the Board of any other related cases within the meaning of Fed. R. Civ. P. 42.

Initial Disclosures

The Board notes applicant's filing of its initial disclosures with the Board. The parties are reminded that written disclosures or disclosed documents, similar to requests for discovery, responses to discovery, and materials or depositions obtained through the discovery process should not be filed with the Board except when submitted (1) with a motion relating to disclosure or discovery; (2) in support of or response to a motion for

¹ If a submission is filed electronically via ESTTA, the parties should simply use the proceeding number of the parent case.

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summary judgment; (3) under a notice of reliance during a party's testimony period; or (4) as exhibits to a testimony deposition. The Board may return disclosures, disclosed documents, and discovery papers or materials filed under other circumstances. See Trademark Rule 2.120(j)(8), 37 C.F.R § 2.120(j)(8); and The Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 413 (2d ed. rev. 2004) and authorities cited therein. See also "Miscellaneous Changes to Trademark Trial and Appeal Board Rules," 72 Fed. Reg. 42246 (Aug. 1, 2007) ("initial written disclosures and initial disclosures of documents will be treated like responses to written discovery requests"). In view thereof, the parties are advised that the Board will accept the filing of initial disclosures only in those instances outlined above. Accordingly, the Board will give no consideration to applicant's initial disclosures filed on September 24, 2010.

Proceedings Suspended

Proceedings herein are **SUSPENDED** pending disposition of applicant's motion (filed July 26, 2010) to dismiss. Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. See Trademark Rule 2.127(d). The motion to dismiss will be considered in due course.



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