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

Proceeding	91196299
Party	Plaintiff Connect Public Relations, Inc.
Correspondence Address	KARL R. CANNON CLAYTON, HOWARTH & CANNON, PC P.O. BOX 1909 SANDY, UT 84091-1909 UNITED STATES kcannon@chcpat.com, ttetzel@chcpat.com, docketclerk@chcpat.com, bdavis@chcpat.com
Submission	Opposition/Response to Motion
Filer's Name	Karl R. Cannon
Filer's e-mail	kcannon@chcpat.com, bdavis@chcpat.com, jserassio@chcpat.com, docketclerk@chcpat.com
Signature	/krc/
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Attachments	Memo_Opposition_Consolidation.pdf (6 pages)(56764 bytes)

KARL R. CANNON (Registration No. 36,468)
BRETT J. DAVIS (Registration No. 46,655)
CLAYTON, HOWARTH & CANNON, P.C.
6965 Union Park Center, Suite 400
Cottonwood Heights, Utah 84047
P.O. Box 1909
Sandy, Utah 84091-1909
Telephone: (801) 255-5335
Facsimile: (801) 255-5338

Attorneys for Connect Public Relations, Inc.

Opposed Mark: CONNECT
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CONNECT PUBLIC RELATIONS, INC., a Utah corporation,)	
)	
Opposer)	OPPOSER'S MEMORANDUM IN
)	OPPOSITION TO APPLICANT'S
v.)	MOTION TO CONSOLIDATE
)	
DIGITALMOJO, INC., a California corporation,)	Opposition No. 91196299
)	
Applicant.)	

Opposer Connect Public Relations, Inc. ("ConnectPR") hereby files this memorandum in opposition to Applicant Applicant Digitalmojo, Inc.'s ("Digitalmojo") Motion to Consolidate.

INTRODUCTION

Digitalmojo's Motion to Consolidate should be denied on the basis that (1) the motion is untimely; and (2) because the motion is an artifice designed by Digitalmojo to improperly circumvent the close of the discovery period in this opposition proceeding (No. 91196299).

I. **Digitalmojo's Motion is Untimely Under TBMP § 511 as No Answers Have Been Filed in the Petitions to Cancel**

TBMP § 511 is clear that "the Board will not consider a motion to consolidate until an answer has been filed (i.e., until issue has been joined) in each case sought to be consolidated." In the present case, ConnectPR has not answered or otherwise plead in response to Digitalmojo's Petitions to Cancel (Nos. 92054395 & 92054427), though it plans to very soon. More importantly, contemporaneously with this filing, ConnectPR has filed motions to dismiss the Petitions to Cancel. ConnectPR respectfully asserts that Digitalmojo's Motion to Consolidate be denied until such time that issues have been properly joined and the outcome of the motions to dismiss have been determined.

II. **Digitalmojo's Motion Should be Denied to the Extent that it Improperly Seeks to Reopen Discovery in this Opposition Proceeding**

Pursuant to the current case schedule issued by the Board in this opposition proceeding, the discovery period for the issues raised in ConnectPR's Amended Notice of Opposition closed on September 4, 2011. In its Motion to Consolidate, Digitalmojo requests that the Board establish a new discovery period for all of the consolidated cases, which would include reopening discovery for the issues raised in this opposition proceeding. However, the discovery period in this opposition proceeding is and should remain closed, even if Digitalmojo's Motion to Consolidate is eventually

granted. Indeed, the sole purpose for Digitalmojo's filing of the Petitions to Cancel may be little more than an end run to circumvent the closure of the discovery period in this opposition. The Board should rebuff outright Digitalmojo's scheme to reopen discovery in this matter, which it has in fact moved the Board to do.

Thus, in the event that the Board grants the Digitalmojo's Motion to Consolidate, ConnectPR respectfully requests that the Board should follow the precedence against re-opening discovery that has already been closed, as set forth in *Dating DNA, LLC v. Imagini Holdings, Ltd.*, 94 USPQ2d 1889 (TTAB 2010)[precedential], in regard to reopening the now expired discovery period in this opposition. In *Dating DNA*, while the Board granted the opposer's motion to consolidate two opposition proceedings, the Board did not allow the opposer to reopen discovery in the earlier-filed opposition proceeding, which had closed. *Id.* In particular, the Board refused to reopen the closed discovery period because the moving party had not established the necessary "excusable neglect." *Id.* Thus, in setting the scheduling order for the consolidated cases, the Board in *Dating DNA* was explicit that, because discovery was closed in the earlier filed opposition, any new discovery must only relate to the claims, defenses and/or marks in the later filed opposition.

Likewise, in the present case, Digitalmojo has failed to establish the "excusable neglect" necessary to allow discovery to re-opened in this opposition proceeding. In fact, Digitalmojo has failed to address the "excusable neglect" issue at all in its Motion to Consolidate. Digitalmojo should therefore be precluded from reopening discovery in this opposition.

Thus, ConnectPR submits that even if the Board grants Digitalmojo's Motion to Consolidate, the Board's case schedule for the consolidated cases should explicitly state that discovery on the issues raised by ConnectPR in this opposition have closed on September 4, 2011, and that discovery

in the consolidated cases may only be had on the new issues raised in Digitalmojo's Petitions to Cancel.

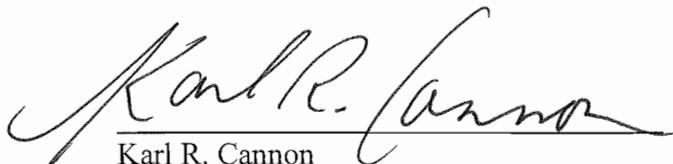
Further, ConnectPR requests that while the discovery should remain closed in the above-captioned opposition if the cases are consolidated, that the case schedule for the consolidated cases not preclude the filing of any properly plead dispositive motions in this opposition, e.g., motion for summary judgment.

III. CONCLUSION

Digitalmojo's Motion to Consolidate should be denied for the reasons set forth herein. Alternatively, if the Motion to Consolidate is granted in whole or in part, then the case schedule for the consolidated cases should make explicit that discovery in this opposition proceeding remains closed and that discovery may only be had on the issues raised in the Petitions to Cancel.

Respectfully submitted this 15 day of September, 2011.

Respectfully submitted;

A handwritten signature in black ink, appearing to read "Karl R. Cannon". The signature is written in a cursive style with a horizontal line underneath it.

Karl R. Cannon
Brett J. Davis

CLAYTON, HOWARTH & CANNON, P.C.

P.O. Box 1909

Sandy, Utah 84091-1909

Telephone: (801) 255-5335

Facsimile: (801) 255-5338

Attorneys for Digitalmojo

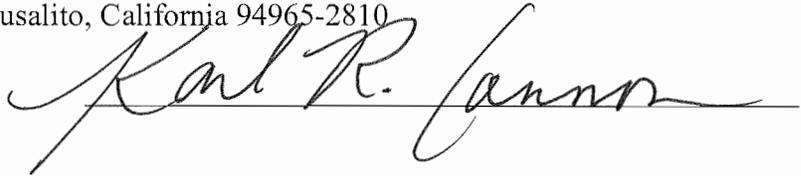
Connect Public Relations, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **OPPOSER'S MEMORANDUM IN OPPOSITION TO APPLICANT'S MOTION TO CONSOLIDATE** to be served, via first class mail, postage prepaid, on this 15 day of September, 2011, to:

Thomas W. Cook, Esq.
Thomas Cook Intellectual Property Attorneys
3030 Bridgeway, Suite 425-430
Sausalito, California 94965-2810

A handwritten signature in cursive script, reading "Karl R. Jann", is written over a horizontal line.