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

Proceeding	91196451
Party	Plaintiff Michael Brandt Family Trust d/b/a Eco-Fresh Industries, Inc.
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Attachments	229-167 Mot to Consolidate.PDF ( 4 pages )(95776 bytes )

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

_____	)	
MICHAEL BRANDT FAMILY TRUST	)	
d/b/a ECO-FRESH INDUSTRIES, INC.,	)	
	)	Opposition No. 91196451
Opposer,	)	
	)	Application Ser. No. 77/867,220
v.	)	
	)	
ABSOPURE WATER COMPANY,	)	
	)	
Applicant.	)	
_____	)	

**CONSENTED MOTION TO CONSOLIDATE PROCEEDINGS**

Michael Brandt Family Trust d/b/a Eco-Fresh Industries, Inc., through its attorneys, moves the Trademark Trial and Appeal Board for an order consolidating Opposition No. 91196167 with Opposition No. 91196451 under Rule 42(a) of the Federal Rules of Civil Procedure based on the following:

1. Michael Brandt Family Trust d/b/a Eco-Fresh Industries, Inc. is the owner of Registration No. 1,557,539 for “ECO-FRESH Stylized” dated September 26, 1989 and Registration No. 1,632,840 for “ECO-FRESH & Design” dated January 29, 1991.

2. Michael Brandt Family Trust d/b/a Eco-Fresh Industries, Inc. has been, and is now using the “ECO-FRESH” mark and name in interstate commerce in connection with general purpose pouch, refrigerator packet, cat litter freshener, carpet deodorizer, shoe paks, suitcase/drawer pak, leather wardrobe freshener, and shoe and foot powder. Said uses have been valid and continuous since prior to Absopure Water Company’s date of first use for the mark

“ECOFRESH” (Serial No. 77/867,171) and “ENVIROFRESH” (Serial No. 77/867,220) and have not been abandoned.

3. These opposition proceedings involve common questions of law and fact. For example, both proceedings involve the almost identical marks. Each of the opposed applications involve the marks “ECOFRESH” and “ENVIROFRESH.” Opposer has opposed the registration of both of these applications due to their similarity under Section 2(d) with Opposer's Registration Nos. 1,557,539 and 1,632,840 covering the mark “ECO-FRESH.” Both proceedings involve virtually identical pleadings. See *S. Industries v. Lamb -Weston, Inc.*, 45 USPQ 2d 1297 (TTAB 1997).

4. The services of the Applicant as described in each of its applications, though different, when considered are each closely related, if not identical, to the various services and products offered by Opposer. Also, many of the services and products offered by Opposer under its ECO-FRESH mark and name are likely to be directed to and be used and purchased by the same class of persons who are likely to purchase and use Applicant's services as described in each of the opposed applications.

5. When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. *Regatta Sport Ltd. v. Telux Pioneer Inc.*, 20 USPQ 2d 1154 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ 2d 1382 (TTAB 1991); *Bigfoot 4x4 Inc. v. Bear Foot Inc.*, 5 USPQ 2d 1444 (TTAB 1987); *Federated Department Stores, Inc. v. Gold Circle Insurance Co.*, 226 USPQ 262 (TTAB 1985); *Plus Products v. Medical Modalities Associates, Inc.*, 211 USPQ 1199 (TTAB 1981); *World Hockey Ass'n v. Tudor Metal Products Corp.*, 185 USPQ 246 (TTAB 1975); and *Izod, Ltd. v. La Chemise Lacoste*, 178 USPQ 440 (TTAB 1973).

6. The consolidation of these proceedings will save time, effort, and expense for both parties and consolidation would be advantageous to both parties.

7. Absopure Water Company will not suffer any prejudice or inconvenience by consolidation of these proceedings.

8. These actions should be consolidated in an effort to conserve the time and resources of the Trademark Trial and Appeal Board.

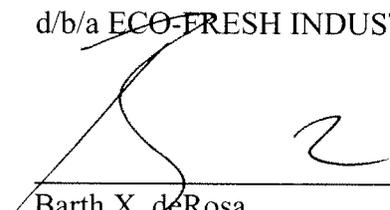
9. These actions should be consolidated in order to expedite these matters.

10. Applicant's counsel, Elizabeth Janda, consented to the consolidation during the settlement conference for the corresponding Opposition No. 91196451 on October 28, 2010.

Respectfully submitted,

MICHAEL BRANDT FAMILY TRUST  
d/b/a ~~ECO-FRESH~~ INDUSTRIES, INC.

Date: November 4, 2010



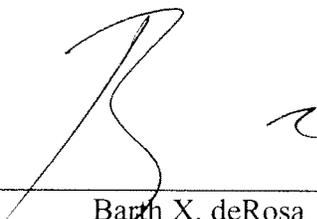
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*Counsel for Opposer*

**CERTIFICATE OF SERVICE.**

I certify that a true and accurate copy of the foregoing Consented Motion to Consolidate Proceedings was served by first class mail, postage prepaid on this 4<sup>th</sup> day of November 2010 upon counsel for Applicant at the following address and also by email:

Elizabeth F. Janda  
Brooks Kushman P.C.  
1000 Town Ctr., Fl. 22  
Southfield, Michigan 48075-1183

A handwritten signature in black ink, appearing to read 'Barth X. deRosa', is written above a horizontal line. The signature is stylized and cursive.

Barth X. deRosa