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

Proceeding	91197518
Party	Plaintiff Athletics Investment Group LLC d/b/a The Oakland Athletics Baseball Company
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Submission	Motion to Consolidate
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Date	06/05/2013
Attachments	MATHLETICS - Motion to Consolidate on Consent.pdf(35930 bytes)

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

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ATHLETICS INVESTMENT GROUP LLC D/B/A :
THE OAKLAND ATHLETICS BASEBALL :
COMPANY, :
:
Opposer, :
:
v. : **Opposition No. 91197518**
:
3P LEARNING PTY LIMITED, :
:
Applicant. :
:
:

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ATHLETICS INVESTMENT GROUP LLC D/B/A :
THE OAKLAND ATHLETICS BASEBALL :
COMPANY, :
:
Opposer, :
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v. :
:
3P LEARNING PTY LIMITED, : **Opposition No. 91206079**
:
Applicant. :
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**MOTION ON CONSENT TO CONSOLIDATE OPPOSITION PROCEEDINGS
AND TO CONFORM OPPOSITION SCHEDULES**

Pursuant to Rule 511 of the Trademark Trial and Appeal Board Manual of Procedure and Fed. R. Civ. P. 42(a), Opposer Athletics Investment Group LLC d/b/a The Oakland Athletics Baseball Company (“Opposer”), by and through counsel, hereby moves for an order consolidating Opposition Nos. 91197518 and 91206079. Opposer further requests that the

schedule for the opposition proceedings be conformed by adopting the dates as set in the most recently instituted of the cases being consolidated, *i.e.*, the schedule set for Opposition No. 91206079. In the event the Board does not adopt the specific schedule set forth in Opposition No. 91206079, the parties respectfully request that the Board reset the initial discovery conference and initial disclosures deadline in the newer proceeding and allow sufficient additional time after the initial disclosures deadline for discovery to be completed or, alternatively, to allow the parties to try to finalize settlement. Counsel for Applicant 3P Learning Pty Limited (“Applicant”) consents to this motion.

MEMORANDUM OF LAW

A. The Oppositions Should Be Consolidated Because They Contain Common Issues of Law and Fact

On November 23, 2010, Opposer filed an opposition to Applicant’s applications to register the standard character word mark MATHLETICS for services in International Class 41, as shown in Application Serial Nos. 77/875,579 and 77/875,559 (Opposition No. 91197518). Applicant filed an answer thereto on August 26, 2011.

On July 16, 2012, Opposer filed an opposition to Applicant’s application to register the mark MATHLETICS and Design, shown below:



for services in International Class 41, as shown in Application Serial No. 85/411,190 (Opposition No. 91206079). The deadline for Applicant to answer the notice of opposition in that proceeding is September 16, 2013.¹

Both opposition proceedings involve identical parties. Both proceedings also involve common questions of fact and law for the Board to resolve, including Applicant’s right to

¹ Pursuant to TBMP § 511 and 37 CFR § 2.104(b), the Board may, in its discretion, order cases consolidated before joinder of issue.

register the mark MATHLETICS. Opposer owns a MAJOR LEAGUE BASEBALL club which owns the names and marks ATHLETICS, ATLETICOS and ATHLETICS-formative marks, including, without limitation, MATHLETICS, and Opposer's grounds for opposition in both proceedings relate to those marks. Rule 511 of the Trademark Trial and Appeal Board Manual of Procedure provides that "[w]hen cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases." See also Fed. R. Civ. P. 42(a); World Hockey Ass'n v. Tudor Metal Prods. Corp., 185 U.S.P.Q. 246, 248 (T.T.A.B. 1975) (ordering consolidation of two opposition proceedings because it was "equally advantageous to both parties in the avoidance of the duplication of effort, loss of time, and extra expense involved in conducting the proceedings alternately").

In addition, counsel for Applicant, Barry F. Soalt, agreed to the consolidation in a June 4, 2013 telephone conversation with Scott P. Ceresia, counsel for Opposer.

B. Discovery And Trial Periods Should Be Conformed

Opposer, with Applicant's consent, further requests that the schedule for the opposition proceedings be conformed by adopting the dates as set in the most recently instituted of the cases being consolidated, *i.e.*, the schedule set for Opposition No. 91206079, as set forth below:

Time to Answer ² :	09/16/2013
Deadline for Discovery Conference ³ :	10/16/2013
Discovery Opens :	10/16/2013
Initial Disclosures Due :	11/15/2013
Expert Disclosure Due :	03/15/2014
Discovery Closes :	04/14/2014
Plaintiff's Pretrial Disclosures :	05/29/2014
Plaintiff's 30-day Trial Period Ends :	07/13/2014
Defendant's Pretrial Disclosures :	07/28/2014

² Applies to Opposition No. 91206079. (In Opposition No. 91197518, Applicant answered on August 26, 2011.)

³ Discovery conference and initial disclosure deadlines apply to Opposition No. 91206079. (In Opposition No. 91197518, the parties have held their discovery conference and agreed to waive Initial Disclosures, as set forth in the record.)

Defendant's 30-day Trial Period Ends : 09/11/2014
Plaintiff's Rebuttal Disclosures : 09/26/2014
Plaintiff's 15-day Rebuttal Period Ends : 10/26/2014

Alternatively, in the event that the Board does not adopt the specific schedule set forth in Opposition No. 91206079, the parties respectfully request sufficient additional time after the initial disclosures deadline to allow for the parties to complete discovery and/or to try to finalize a settlement of this matter. Applicant is currently reviewing a draft settlement agreement which, if accepted, would resolve this matter without the need to proceed with either of the opposition proceedings. Because the parties have devoted their resources toward the resolution of this complicated matter, and in light of the size of the Opposer and Applicant companies, the size and scope of their respective programs and services, the extensive period of time involved and the substantial progress that has been made toward settlement, the parties have not yet exchanged discovery requests. The parties therefore respectfully request that, if the specific schedule of Opposition No. 91206079 is not adopted, the Board allow sufficient additional time after the initial disclosures deadline for discovery to be completed or, alternatively, to allow the parties to try to finalize settlement.

CONCLUSION

For the foregoing reasons, Opposition Nos. 91197518 and 91206079 should be consolidated and made part of Opposition Proceeding No. 91197518, and the schedule for both opposition proceedings should be conformed to the schedule set by the Board in Opposition No. 91206079.

Dated: New York, New York
June 5, 2013

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Scott P. Ceresia/
Mary L. Kevlin
Scott P. Ceresia

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on June 5, 2013, I caused a true and complete copy of the foregoing MOTION ON CONSENT TO CONSOLIDATE OPPOSITIONS AND TO CONFORM OPPOSITION SCHEDULES to be sent via First Class Mail, postage paid, to Applicant's attorney of record and correspondent, Barry F. Soalt, Esq., Procopio Cory Hargreaves & Savitch LLP, 525 B Street, Suite 2200, San Diego, CA 92101.

Dated: New York, New York
June 5, 2013

/Scott P. Ceresia/
Scott P. Ceresia