

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

Mailed: April 28, 2011

Opposition No. 91199035
Cancellation No. 92053919

D.C. ONE WHOLESALER, INC.

v.

JONATHAN E. CHIEN dba I LOVE DC,
LLC

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

On March 16, 2011, plaintiff filed a notice of opposition that was assigned proceeding No. 91199035. On April 6, 2011, plaintiff filed an amended notice of opposition combined with a petition to cancel in proceeding No. 91199035. Unfortunately, the ESTTA filing system does not process such combined complaints when filed in an opposition. Consequently, plaintiff, on April 20, 2011, filed a petition to cancel Registration No. 3759575, assigned proceeding No. 92053919, and an amended notice of opposition in proceeding No. 91199035 directed solely to application Serial No. 77962853. On April 26, 2011, defendant filed an answer to the original notice of opposition in proceeding No. 91199035.

In order to put these proceedings on the same schedule, the following determinations are made.

Proceedings are consolidated

The Board has reviewed each of the above-identified proceedings which involve the same parties and at least some of the same questions of law and fact. An amended complaint has been filed in the opposition proceeding and an answer has not yet been filed in the cancellation proceeding.

When the parties are involved in cases concerning common questions of law or fact pending before the Board, consolidation of such cases may be appropriate. Proceedings may be consolidated upon the Board's own initiative. See Fed. R. Civ. P. 42(a); and TBMP §511 (2d ed. rev 2004). The Board, in its discretion, may order cases consolidated prior to joinder of issue (*i.e.*, before an answer has been filed in each case).

The Board finds it appropriate to consolidate the above-identified proceedings for purposes of judicial economy. Accordingly, Opposition No. 91199035 and Cancellation No. 92053919 are hereby consolidated and may be presented on the same records and briefs (except that the answers for each proceeding are to be filed in the corresponding proceeding). The record will be maintained in Opposition No. **91199035** as the "parent" case, but all papers filed in these cases should include both proceeding numbers in ascending order.

Amended notice of opposition

The amended complaint filed in Opposition No. 91199035 on April 6, 2011 was submitted as a matter of course. Fed. R. Civ.

P. 15(a)(1)(A). The amended notice of opposition filed on April 20, 2011 was ministerial in nature due to the constraints of the ESTTA filing system. As such, it is accepted and is plaintiff's operative pleading for the opposition proceeding. Fed. R. Civ. P. 15(a)(2).

Answers

Defendant has not yet filed an answer in the cancellation proceeding. In view of the amended pleading in the opposition proceeding, a due date for an answer thereto is set below. Defendant is to file the answers separately in each proceeding (an exception to the protocol in a consolidated proceeding that all papers are to be filed in the "parent" case).

The schedule

The schedule for the consolidated proceeding coincides with the most recently instituted case and is repeated below:

Time to Answer (in each proceeding separately)	5/31/2011
Deadline for Discovery Conference	6/30/2011
Discovery Opens	6/30/2011
Initial Disclosures Due	7/30/2011
Expert Disclosures Due	11/27/2011
Discovery Closes	12/27/2011
Plaintiff's Pretrial Disclosures	2/10/2012
Plaintiff's 30-day Trial Period Ends	3/26/2012
Defendant's Pretrial Disclosures	4/10/2012
Defendant's 30-day Trial Period Ends	5/25/2012
Plaintiff's Rebuttal Disclosures	6/9/2012
Plaintiff's 15-day Rebuttal Period Ends	7/9/2012

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on

the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.
