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

Proceeding	91199117
Party	Defendant Sergeant's Pet Care Products, Inc.
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Attachments	Motion to Consolidate Opp# 91199117.pdf (5 pages)(16493 bytes)

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

**IN THE MATTER OF TRADEMARK
APPLICATION SERIAL NO. 85/120994**

MERIAL)	
)	
Opposer)	
)	
v.)	Opposition No. 91199117
)	
SERGEANT’S PET CARE PRODUCTS, INC.)	
)	
Applicant)	
)	

MOTION TO CONSOLIDATE AND BRIEF IN SUPPORT

Applicant, SERGEANT’S PET CARE PRODUCTS, INC. (“Applicant”), by and through its undersigned counsel, pursuant to Fed. R. Civ. P. 42(a) and TBMP §§ 501 and 511, hereby moves to consolidate this Opposition proceeding with Opposition No. 91197053, styled *Merial v. Sergeant’s Pet Care Products, Inc.*, filed October 21, 2010 (the “Prior Opposition”). In support of this Motion, Applicant states as follows:

1. In the present Opposition, Applicant seeks the registration of “PRONYL OTC” (Serial No. 85/120994) for flea and tick control products, namely, antiparasitic collars, sprays, shampoos, medicated powders and topical ointments for pets not for sale to or through licensed veterinarians.

2. Opposer MERIAL (“Opposer”) has asserted that it will be damaged by Applicant’s application because it is the owner of U.S. Registration No. 2,049,456 for “FRONTLINE” and of U.S. Registration No. 2,763,796 for “FRONTLINE PLUS” both for

insecticides and antiparasitic agents for veterinary use. Opposer has also asserted common law rights in “FRONTLINE,” “FRONTLINE PLUS,” and “FRONTLINE TOP SPOT.”¹

3. On October 21, 2010, Opposer filed the Prior Opposition against Applicant to oppose its applications for “F-PRONIL” (Serial No. 85/021258), “FIPROSPOT” (Serial No. 85/021239), and “FIPROGUARD” (Serial No. 85/021194), all of which pertain to flea and tick control products, namely, antiparasitic collars, sprays, shampoos, medicated powders and topical ointments for pets not for sale to or through licensed veterinarians.

4. In the Prior Opposition, Opposer asserts that it would be damaged by Applicant’s applications because it is the owner of U.S. Registration No. 3,821,646 for “FRONTLINE TOP SPOT” for topical liquid applications for use on animals for the prevention and/or treatment of flea and tick infestation; U.S. Registration No. 1,321,734 for “HEARTGARD” for antiparasitic preparations for veterinary use; and U.S. Registration No. 3,821,644 for “TOP SPOT” also for topical liquid applications for use on animals for the prevention and/or treatment of flea and tick infestation.²

5. At the time Opposer filed the Prior Opposition, the application which is the subject of this Opposition proceeding, Applicant’s “PRONYL OTC” application, had not yet been published for opposition.

6. This Opposition and the Prior Opposition involve the same parties.

7. This Opposition and the Prior Opposition all relate to flea and tick control products and Opposer has asserted damage to its same family of marks related to

¹ While Applicant disagrees with Opposer’s allegations in its Notices of Opposition, Applicant takes the allegations related to Opposer’s ownership of certain United States Trademarks as true solely for purposes of this Motion.

² See *supra* note 1.

“FRONTLINE” and “HEARTGARD,” therefore common questions of law and fact will predominate the issues in both proceedings.

8. Consolidation of this Opposition with the Prior Opposition will save considerable time, effort, and expense because the parties will not have to engage in duplicative discovery (including expert discovery) as they will if the Opposition proceedings remain independent.

9. Applicant and Opposer are represented by the same counsel in this proceeding and the Prior Opposition.

10. Applicant notified counsel for Opposer of its intention to file this Motion. Opposer has advised that it will not consent to consolidation.

11. Applicant has already answered the Notices of Opposition in this and the Prior Opposition and this Board has already set schedules in both proceedings.

12. Applicant is not filing this Motion to Consolidate for dilatory purposes. The Prior Opposition has only recently resumed proceedings following an amendment to the applications at issue therein and a thirty-day window in which Opposer had the opportunity to withdraw its Opposition. No substantive discovery has occurred in this Opposition and virtually no discovery has been exchanged in the Prior Opposition other than Initial Disclosures.

13. For all the foregoing reasons, good cause exists to consolidate this proceedings with the Prior Opposition. Applicant therefore requests that this proceeding be consolidated with the Prior Opposition, that the Prior Opposition become the parent proceeding, and that all dates be re-set in the consolidated Opposition proceeding to coincide with the dates set by the Board in this proceeding.

14. Applicant is filing, contemporaneously herewith, a Motion to Consolidate in the Prior Opposition.

WHEREFORE, Applicant prays that its Motion to Consolidate be granted, that this Opposition be consolidated for all purposes with the Prior Opposition (No. 91197053) as is more fully set forth above, and for such other and further relief as this Board deems just and proper in the premises.

Respectfully submitted,

POLSINELLI SHUGHART PC

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ATTORNEYS FOR APPLICANT
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading was served by United States Mail, postage prepaid, this 18th day of April 2011, to:

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