

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

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Mailed: December 27, 2011

**Opposition Nos. 91201492
(parent case)**

Opposition No. 91201493

Checker Leather Limited

v.

Kathleen Mchugh

By the Board:

CONSOLIDATION

The Board may consolidate pending cases that involve common questions of law or fact. See Fed. R. Civ. P. 42(a); and Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 511 (3d ed. 2011). *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). Inasmuch as the parties to the above-captioned proceedings are the same, and the proceedings involve common questions of law and/or fact, consolidation is appropriate.¹

Opposition Nos. 91201492 and 91201493 are hereby consolidated and may be presented on the same record and

¹ Accordingly, applicant's motion to consolidate, filed in Opposition No. 91201493, is hereby granted.

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briefs. **Opposition No. 91201492** is designated the "**parent case**" (see caption above). From this point forward, all motions and papers filed herein must be filed in the parent case only (unless the Board directs a party or the parties otherwise), and must caption both consolidated oppositions, identifying the parent case first.

Consolidated cases do not lose their separate identity because of consolidation. Each proceeding retains its separate character and requires entry of a separate judgment. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings, and a copy of the final decision shall be placed in each proceeding file.

The parties are directed to promptly inform the Board of any other related cases within the meaning of Fed. R. Civ. P. 42.

DEFAULT

In **Opposition No. 91201493**, the Board issued a notice of default to applicant on November 4, 2011. Applicant's response, filed November 28, 2011 therein, is noted.

The standard for determining whether default judgment should be entered for failure to timely answer is the Fed. R. Civ. P. 55(c) standard, namely, whether a defendant has shown good cause why judgment by default should not be

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entered against it. See TBMP § 312.01 (3d ed. 2011). As a general rule, good cause to set aside a defendant's default will be found where the defendant's delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where the defendant has a meritorious defense. See *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991).

In its response, applicant requests that its default be set aside "due to mistake and inadvertence." In support thereof, applicant asserts that it did not realize that two separate opposition proceedings had been filed, and that it "intends to vigorously challenge both" proceedings (applicant's brief, unnumbered p. 2).²

Upon review of the record, it does not evidence evasive conduct, bad faith or gamesmanship on applicant's part, and does not suggest that the failure to timely answer was the result of willful behavior or inattentiveness to Opposition No. 91201493. The response indicates that applicant will seek dismissal of the notice of opposition on the basis of insufficiency in the pleading, and that if the proceeding is not dismissed it intends to assert a meritorious defense to the proceeding.

Moreover, while the determination of whether judgment by default should be entered lies within the Board's discretion,

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the Board nevertheless prefers to determine the issue of the right to registrability on the merits of the claims and defenses brought before it, and to resolve the issue of default in favor of the defendant, where appropriate. See TBMP § 312.02 (3d ed. 2011).

In view thereof, the Board finds that applicant has demonstrated good cause to set aside its default. Accordingly, the Board's notice of default is hereby set aside, and judgment will not be entered against applicant on that basis.

MOTION TO DISMISS

In **Opposition No. 91201492**, proceedings were suspended under Trademark Rule 2.127(d) pending disposition of applicant's motion (filed October 7, 2011) to dismiss.

Inasmuch as applicant moved for consolidation of these proceedings, and the Board has found consolidation to be appropriate, the Board exercises its discretion to manage the cases on its docket, declines to grant said motion to dismiss as conceded, and defers consideration of said motion until such time as the Board determines a similar motion which it herein allows applicant time to file in Opposition No. 91201493 (see below).

POTENTIAL MOTION TO DISMISS

² All submissions filed in inter partes proceedings must be numbered. See Trademark Rule 2.126(a).

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In **Opposition No. 91201493**, applicant requests that the motion to dismiss filed in Opposition No. 91201492 serve as a motion to dismiss for both oppositions; applicant attached to its response a copy of said motion which is captioned and was only filed in, and presumably only served with respect to, Opposition No. 91201492.

Applicant is allowed until ten (10) days from the mailing date of this order in which to file in Opposition No. 91201493 AND in parent case Opposition No. 91201492, and to re-serve on opposer, a motion to dismiss directed to Opposition No. 91201493, failing which the Board will reset dates, including applicant's time to file an answer, in Opposition No. 91201493.

This consolidated proceeding is otherwise suspended.