ESTTA Tracking number: **ESTTA458196**
Filing date: **02/23/2012**

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

Proceeding	91201502
Party	Plaintiff Viking Range Corporation
Correspondence Address	Marcy L. Sperry Womble Carlyle Sandridge & Rice, PLLC P.O. Box 7037 Atlanta, GA 30357-0037 UNITED STATES atltrademarks@wcsr.com, msperry@wcsr.com
Submission	Motion to Consolidate
Filer's Name	Marcy L. Sperry
Filer's e-mail	msperry@wcsr.com, atltrademarks@wcsr.com
Signature	/Marcy L. Sperry/
Date	02/23/2012
Attachments	Motion_to_Consolidate_Proceedings.pdf (9 pages)(391626 bytes)

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

Viking Range Corporation, Opposer, v. Viking River Cruises (Bermuda) Ltd., Applicant.	Opposition No. 91201502 Opposition No. 91201506 Opposition No. 91201504 Opposition No. 91201512 Opposition No. 91201495 Opposition No. 91201501 Opposition No. 91201482

OPPOSER'S MOTION TO CONSOLIDATE PROCEEDINGS AND MEMORANDUM OF LAW IN SUPPORT THEREOF

Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and Section 511 of the Trademark Trial and Appeal Board Manual of Procedure, Viking Range Corporation ("Opposer"), moves to consolidate the seven above-captioned proceedings ("the Oppositions") for purposes of trial and pre-trial proceedings, and reset times for discovery and testimony periods.

The following table summarizes the trademark applications (the "Applications"), which are the subject of the Oppositions referenced above.

Mark and Serial Number	Description of Goods and Services	Opposition Number
VIKING (Serial No. 85/133,747)	IC 41: Arranging, organizing and hosting social entertainment events; entertainment and education services in the nature of live dance and musical performances; entertainment information; entertainment services, namely, organizing and conducting parties, wine and food tastings, contests, live stage performances, namely, plays, concerts, piano	91201495

	recitals, vocal recitals, comedy shows, monologue performances, poetry and narrative readings, nightclub shows, namely, plays, concerts, piano recitals, vocal recitals, comedy shows, monologue performances, poetry and narrative readings, variety and comedy shows, and theatrical and musical floor shows provided at performance venues; entertainment services, namely, casino gaming; educational services, namely, conducting lectures and seminars in the fields of music, theatre, and film; video arcade services; libraries; provision of in-cabin interactive television programming; health club services, namely providing instruction, classes, and equipment in the field of physical exercise; organizing and hosting cultural and arts events; organization of exhibitions for cultural or educational purposes	
VIKING RIVER CRUISES (Serial No. 85/133,778)	IC 41: Arranging, organizing and hosting social entertainment events; entertainment and education services in the nature of live dance and musical performances; entertainment information; entertainment services, namely, organizing and conducting parties, wine and food tastings, contests, live stage performances, namely, plays, concerts, piano recitals, vocal recitals, comedy shows, monologue performances, poetry and narrative readings, nightclub shows, namely, plays, concerts, piano recitals, vocal recitals, comedy shows, monologue performances, poetry and narrative readings, variety and comedy shows, and theatrical and musical floor shows provided at performance venues; entertainment services, namely, casino gaming; educational services, namely, conducting lectures and seminars in the fields of music, theatre, and film; video arcade services; libraries; provision of in-cabin interactive television programming; health club services, namely providing instruction, classes, and equipment in the field of physical exercise; organizing and hosting cultural and arts events; organization of exhibitions for cultural or educational purposes	91201502
VIKING TOURS (Serial No. 85/136,552)	IC 41: Arranging, organizing and hosting social entertainment events; entertainment and	91201506

	education services in the nature of live dance and musical performances; entertainment information; entertainment services, namely, organizing and conducting parties, wine and food tastings, contests, stage shows, nightclub shows, variety and comedy shows, and theatrical productions and musicals; entertainment services, namely, casino gaming; educational services, namely, conducting lectures and seminars in the fields of music, theatre, and film; video arcade services; libraries; in-cabin interactive television programming; health club services, namely providing instruction, classes, and equipment in the field of physical exercise; organizing and hosting cultural and arts events; organization of exhibitions for cultural or educational purposes	
VIKING RIVER CRUISES EXPLORING THE WORLD IN COMFORT & Design (Serial No. 85/136,757) VIKING RIVER CRUISES *Exploring the World in Comfort*	IC 41: Arranging, organizing and hosting social entertainment events; entertainment and education services in the nature of live dance and musical performances; entertainment information; entertainment services, namely, organizing and conducting parties, wine and food tastings, contests, stage shows, nightclub shows, variety and comedy shows, and theatrical productions and musicals; entertainment services, namely, casino gaming; educational services, namely, conducting cooking classes, and lectures, and seminars in the fields of music, theatre, and film; video arcade services; libraries; in-cabin interactive television programming; health club services, namely, providing instruction, classes, and equipment in the field of physical exercise; organizing and hosting cultural and arts events; organization of exhibitions for cultural or educational purposes	91201501
VIKING RIVER CRUISES & Design (Serial No. 85/136,505) VIKING RIVER CRUISES	IC 41: Arranging, organizing and hosting social entertainment events; entertainment and education services in the nature of live dance and musical performances; entertainment information; entertainment services, namely, organizing and conducting parties, wine and food tastings, contests, live stage performances, namely, plays, concerts, piano	91201504

	recitals, vocal recitals, comedy shows, monologue performances, poetry and narrative readings, nightclub shows, namely, plays, concerts, piano recitals, vocal recitals, comedy shows, monologue performances, poetry and narrative readings, variety and comedy shows, and theatrical and musical floor shows provided at performance venues; entertainment services, namely, casino gaming; educational services, namely, conducting lectures and seminars in the fields of music, theatre, and film; video arcade services; libraries; provision of in-cabin interactive television programming; health club services, namely, providing instruction, classes, and equipment in the field of physical exercise; organizing and hosting cultural and arts events; organization of exhibitions for cultural or educational purposes	
VIKING LEGEND (Serial No. 85/136,726)	IC 41: Arranging, organizing and hosting social entertainment events; entertainment and education services in the nature of live dance and musical performances; entertainment information; entertainment services, namely, organizing and conducting parties, wine and food tastings, contests, stage shows, nightclub shows, variety and comedy shows, and theatrical productions and musicals; entertainment services, namely, casino gaming; educational services, namely, conducting cooking classes, and lectures, and seminars in the fields of music, theatre, and film; video arcade services; libraries; in-cabin interactive television programming; health club services, namely, providing instruction, classes, and equipment in the field of physical exercise; organizing and hosting cultural and arts events; organization of exhibitions for cultural or educational purposes	91201482
VIKING LONGSHIPS (Serial No. 85/276,774)	IC 41: Arranging, organizing and hosting social entertainment events; entertainment and education services in the nature of live dance and musical performances; entertainment information; entertainment services, namely, organizing and conducting parties, wine and food tastings, contests, stage shows, nightclub shows, variety and comedy shows, and	91201512

	theatrical productions and musicals; entertainment services, namely, casino gaming; educational services, namely, conducting cooking classes, and lectures, and seminars in the fields of music, theatre, and film; video arcade services; libraries; in-cabin interactive television programming; health club services, namely, providing instruction, classes, and equipment in the field of physical exercise; organizing and hosting cultural and arts events; organization of exhibitions for cultural or educational purposes	

In support of this Motion, Opposer states the following:

1. The parties to the Oppositions are the same;
2. The marks at issue in the Oppositions all share the term VIKING;
3. The marks at issue in the Oppositions are substantially similar and produce a similar commercial impression;
4. The services at issue in the Oppositions are identical or are substantially related;
5. The pleadings in the Oppositions are nearly identical;
6. The legal and factual issues in the Oppositions are the same;
7. Applicant has served nearly identical discovery requests in the Oppositions;
8. As all of the Oppositions are either in the pre-discovery or initial discovery phase, Opposer would not expect consolidation to cause prejudice or inconvenience to Applicant;
9. Because common issues of law and fact are involved in the Oppositions, consolidation will save the Board and the parties time, effort, and expense.

ARGUMENT

I. CONSOLIDATION STANDARD

Under Rule 42(a) of the Federal Rules of Civil Procedure, consolidation is proper when actions involve "a common question of law or fact." Fed. R. Civ. P. 42(a); *see also S. Industries Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293, 1297 (TTAB 1997) (both proceedings involved the same mark and virtually identical pleadings); *Ritchie v. Simpson*, 41 USPQ2d 1859 (TTAB 1996), rev'd on other grounds, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999) (cases consolidated despite variations in marks and goods). The decision to consolidate proceedings rests within the discretion of the Board. TBMP § 511. In deciding whether to consolidate, the Board weighs "the savings in time, effort, and expense, which may be gained from consolidation, against any prejudice or inconvenience that may be caused thereby." *Id.*

II. CONSOLIDATION IS PROPER BECAUSE THE OPPOSITIONS INVOLVE COMMON QUESTIONS OF LAW AND FACT.

The issues in the Oppositions are substantially identical. The parties in all the Oppositions are the same. Applicant's marks at issue in the Oppositions all contain the term VIKING and are all for identical or substantially related services. In each Opposition, Opposer relies on the identical applications and registrations for the mark VIKING ("Opposer's Marks"), and asserts the same claims. Specifically, the Notice of Opposition for each case alleges that Applicant's marks are likely to cause confusion and to dilute the distinctive quality of Opposer's Marks, and that Applicant lacked a bona fide intent to use Applicant's marks in commerce at the time Applicant filed its Applications. The Answers in each Opposition are nearly identical. While Applicant has served a counterclaim in Opposition No. 91201495 seeking to cancel Opposer's Registration No. 3,326,880 for the mark VIKING, this counterclaim and Opposer's Answer again involve nearly identical issues of law and fact as the other pending Oppositions.

The parties held the discovery conference for all seven of the Oppositions on February 13, 2012. During the conference, Opposer's counsel requested consent to consolidation of the Oppositions but Applicant's counsel refused to consent at that time. The discovery period has opened for six of the seven oppositions. Of these six oppositions in the discovery period, Applicant has served virtually identical initial disclosures, interrogatories, document requests, and admission requests, indicating that Applicant considers the issues involved in the Oppositions to be the same. In fact, the only difference in the 18 sets of discovery requests that Applicant has served are references to Applicant's mark at issue in each particular Opposition. Otherwise, the 18 sets of discovery requests are identical and ask for the very same information and documents. In view of the substantially identical grounds for opposition in all pending proceedings, common questions of law and fact are involved in each proceeding. Accordingly, consolidation will result in savings in time, effort and expense. Finally, Opposer is aware of no reason why consolidation would cause prejudice or inconvenience to Applicant.

III. CONCLUSION

Consolidation of the Oppositions is appropriate due to the substantial commonality of factual and legal issues in the proceedings. Because the Oppositions involve the same parties, similar marks, and similar claims, consolidation will streamline the issues and avoid unnecessary costs and delays. Therefore, pursuant to TBMP Section 511 and Rule 42(a) of the Federal Rules of Civil Procedure, Opposer respectfully requests that the Board grant consolidation of the Oppositions. Opposer also requests that the Board suspend all proceedings until the Board rules on this motion. Following the disposition of this motion, Opposer requests that the discovery and testimony periods be reset to allow the parties to complete discovery and to take testimony in these proceedings under a single, consolidated opposition. In particular, Opposer requests that the discovery and remaining opposition deadlines be reset pursuant to the schedule for

Opposition No. 91201495. Finally, Opposer requests that the Board require Applicant to re-serve its discovery requests in the single consolidated Opposition within the discovery period as set forth in Opposition No. 91201495.

This 23rd day of February, 2012.

Respectfully submitted,

Sarah Anne Keefe
Marcy L. Sperry
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
271 17th Street, NW
Suite 2400
Atlanta, Georgia 30363-1017
Telephone: (404) 879-2432
Facsimile: (404) 879-2932
Email: msperry@wcsr.com
skeefe@wcsr.com

Attorneys for Opposer, Viking Range Corporation

CERTIFICATE OF MAILING

I do hereby certify that on February 23, 2012, I filed via electronic means (ESTTA) this MOTION TO CONSOLIDATE with the:

U.S. Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

Marcy L. Sperry

CERTIFICATE OF SERVICE

I do hereby certify that on February 23, 2012, I mailed by United States mail, first class postage prepaid, a true and correct copy of this MOTION TO CONSOLIDATE to:

Beth M. Goldman
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, California 94105

Marcy L. Sperry

WCSR 7149051v1