

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

MBA

Mailed: March 26, 2012

**Opposition No. 91201482  
(parent case)**

Opposition No. 91201495  
Opposition No. 91201501  
Opposition No. 91201502  
Opposition No. 91201504  
Opposition No. 91201506  
Opposition No. 91201512

Viking Range Corporation

v.

Viking River Cruises  
(Bermuda) Ltd.

**Michael B. Adlin, Interlocutory Attorney:**

These cases now come up for consideration of opposer's contested motions to consolidate and suspend, both filed February 23, 2012, and opposer's contested motion to extend its time to respond to applicant's discovery requests, filed March 14, 2012. On March 23, 2012, the Board held a teleconference with the parties to hear further argument on and resolve the motions, at which Marcy L. Sperry appeared on opposer's behalf and Beth M. Goldman appeared on applicant's behalf. The interlocutory attorney assigned to this proceeding conducted the teleconference.

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### Consolidation and Suspension

By way of background, applicant seeks registration of VIKING and VIKING RIVER CRUISES and variations thereof for educational, entertainment and related services, including in certain applications cooking classes.<sup>1</sup> Some of applicant's involved marks include a design. In each of its notices of opposition, opposer pleads prior use and registration of VIKING and variations thereof for cooking-related goods and services, including a cooking school.<sup>2</sup> Opposer pleads the same registrations in each proceeding, and some of its pleaded registrations are over five years old. As grounds for opposition, opposer alleges that use of applicant's marks would be likely to cause confusion with, and dilute, opposer's marks, and that applicant does not have a bona fide intention to use its marks. In its answers, applicant denies the salient allegations in the notices of opposition and counterclaims for cancellation of opposer's pleaded Registration No. 3326880 based on a hypothetical claim of priority and likelihood of confusion.

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<sup>1</sup> Application Serial Nos. 85136726, 85133747, 85136757, 85133778, 85136505, 85136552 and 85276774.

<sup>2</sup> Registration Nos. 1437211, 1565774, 1598452, 1798615, 1805114, 1885831, 2196291, 2196439, 2493555, 2724541, 3163333, 3326880, 3655276 and 3836066.

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In its answer, opposer denies the salient allegations in the counterclaim.

Opposer argues that these proceedings should be consolidated because in each of them the parties, opposer's pleaded marks, the goods and services at issue and the grounds for opposition are identical or substantially similar. Furthermore, each of applicant's involved applications includes the word VIKING. Opposer points out that while applicant served seven different sets of discovery requests, one for each proceeding, most of the requests are "virtually identical." Opposer requests not only consolidation, but also that applicant be required "to re-serve its discovery requests" in a single document.

Applicant argues that because there are differences between its involved marks, some of which are intended to be used for services "patently unrelated to Opposer's goods or services and field of use," consolidation is inappropriate. Specifically, applicant points out that the Board's analysis will be different for each of applicant's involved marks. Applicant also argues that it would be prejudiced by consolidation, because instead of being entitled to serve 525 interrogatories under Trademark Rule

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2.120(d) (75 interrogatories x 7 proceedings), it will be limited to 75.

As held during the teleconference, opposer's motion to consolidate is hereby **GRANTED**. When cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases. See Fed. R. Civ. P. 42(a); see also, Regatta Sport Ltd. v. Telux-Pioneer Inc., 20 USPQ2d 1154 (TTAB 1991); TBMP § 511 (3d ed. 2011). Here, as applicant conceded during the teleconference, notwithstanding the differences between its involved applications, all seven cases involve common questions of law and fact, specifically which party enjoys prior rights, whether one or more of applicant's marks are likely to be confused with opposer's marks and whether applicant has a bona fide intention to use one or more of its marks.

Indeed, while the answers to these common questions of law and fact may be different in some cases than in others, the point remains that the parties to all seven cases are the same, the claims in all seven cases are the same, opposer's pleaded registrations are the same and the parties' goods and services are mostly the same. Consolidation under these circumstances is routine and

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appropriate. See, e.g., Ritchie v. Simpson, 41 USPQ2d 1859, 1860 (TTAB 1996), rev'd on other grounds, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999); TBMP § 511.

Applicant's concern that different comparisons and evaluations will have to be made with respect to each of applicant's involved applications is misplaced. In fact, "[c]onsolidated cases do not lose their separate identity because of consolidation. Each proceeding retains its separate character and requires entry of a separate judgment." TBMP § 511. That is, as applicant recognizes, the differences between applicant's marks "change the Board's analysis of whether the marks ... are similar in overall commercial impression to Opposer's mark," but consolidation for procedural reasons and efficiency's sake does not change this. Indeed, while the Board will likely issue a single decision in this case, it will, to the extent necessary and appropriate, address the involved applications separately. The point, however, is that consolidation will aid judicial economy, by for example allowing the parties to take each witness's deposition once rather than seven times.

With respect to discovery, this appears to be a garden variety dispute focusing on likelihood of confusion, and

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there appears to be no reason why applicant would need to serve anywhere close to 75 interrogatories, given that, as discussed during the teleconference, a single, otherwise identical request concerning each of applicant's involved marks will count as one rather than seven requests.

However, if applicant can in the future establish a legitimate need to serve more than 75 interrogatories, it may seek leave to serve any necessary additional interrogatories. Therefore, the general 75 interrogatory limit is not a basis upon which to maintain seven separate but closely related proceedings between the same parties.

The consolidated cases may be presented on the same record and briefs. See Helene Curtis Industries Inc. v. Suave Shoe Corp., 13 USPQ2d 1618 (TTAB 1989) and Hilson Research Inc. v. Society for Human Resource Management, 27 USPQ2d 1423 (TTAB 1993).

The Board file will be maintained in Opposition No. 91201482 as the "parent" case. As a general rule, from this point on only a single copy of any paper or motion should be filed herein; but that copy should bear all seven proceeding numbers in its caption.

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated

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cases shall take into account any differences in the issues raised by the respective pleadings; a copy of the decision shall be placed in each proceeding file.

Opposer's motion to suspend is expressly based on an anticipated delay in ruling on its motion for consolidation, and on uncertainties concerning applicant's outstanding discovery requests. Because there was no delay in ruling on the motion to consolidate, with this order issuing before opposer's reply brief was due, and because the uncertainties concerning the outstanding discovery requests have been resolved, with opposer being ordered during the teleconference to respond to each of applicant's interrogatories, document requests and requests for admission in a single document,<sup>3</sup> opposer's motion to suspend is denied as moot.

#### Extension

As held during the teleconference, because opposer filed its motion for extension before its responses to applicant's discovery requests were due on March 19, 2012, any failure to serve objections to applicant's discovery requests or respond to requests for admission by that date

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<sup>3</sup> During the teleconference the Board declined to order applicant to re-serve its discovery requests in a single document.

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would not result in waiver of the objections or the requests being deemed admitted. In any event, the parties indicated during the teleconference that opposer already served timely objections to applicant's interrogatories and responded to the requests for admission. Therefore, the only remaining question is when opposer must respond to applicant's outstanding document requests. During the teleconference, the parties agreed that opposer's responses to applicant's document requests are now due **April 18, 2012.**

Conclusion

Opposer's motion to consolidate is granted, its motion to suspend is moot and its motion to extend its time to respond to applicant's discovery requests is granted to the extent set forth herein. Disclosure, discovery, trial and other dates are reset as follows:

Responses to Document Requests Due	4/18/2012
Expert Disclosures Due	7/13/2012
Discovery Closes	8/12/2012
Plaintiff's Pretrial Disclosures	9/26/2012
Plaintiff's 30-day Trial Period Ends	11/10/2012
Defendant's Pretrial Disclosures	11/25/2012
Defendant's 30-day Trial Period Ends	1/9/2013
Plaintiff's Rebuttal Disclosures	1/24/2013
Plaintiff's 15-day Rebuttal Period Ends	2/23/2013

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

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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.

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