

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

Mailed: January 30, 2012

Opposition Nos. 91203269 (parent)

91203271

Cancellation No. 92055021

Babycakes NYC, Inc.

v.

Select Brands, Inc.

**Robert H. Coggins,  
Interlocutory Attorney:**

These cases come up on opposer/petitioner's motion (filed January 10, 2012, in each case) to suspend proceedings pending final determination of an *ex parte* appeal of opposer/petitioner's pleaded application Serial No. 85214746.<sup>1</sup> Applicant/respondent has stated that it does

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<sup>1</sup> The filings fail to indicate proof of service on applicant/respondent as required by Trademark Rule 2.119. In order to expedite this matter, applicant/respondent is directed to the following URLs where it may view a copy of the filings:

<http://ttabvueint.uspto.gov/ttabvue/v?pno=91203269&pty=OPP&eno=4>

<http://ttabvueint.uspto.gov/ttabvue/v?pno=91203271&pty=OPP&eno=4>

<http://ttabvueint.uspto.gov/ttabvue/v?pno=92055021&pty=CAN&eno=4>

Strict compliance with Trademark Rule 2.119 is required by opposer/petitioner in all future papers filed with the Board.

not object to the suspension. Before taking up the motion to suspend, the Board addresses the issue of consolidation.<sup>2</sup>

### Consolidation

It has come to the attention of the Board that Opposition Nos. 91203269 and 91203271 and Cancellation No. 92055021 involve the same parties and common questions of law and fact. It would therefore be appropriate to consolidate these proceedings pursuant to Fed. R. Civ. P. 42(a).

Consolidation is discretionary with the Board, and may be ordered upon the Board's own initiative. *See, for example, Wright & Miller, Federal Practice and Procedure: Civil* §2383 (2004); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991) (Board's initiative). Accordingly, the Board exercises its discretion to consolidate the above-noted opposition and cancellation proceedings prior to the filing of answer in any of the cases. *See* TBMP §§ 305 and 511 (3d ed. 2011).

The Board file will be maintained in Opposition No. 91203269 as the "parent" case. The parties should no longer file separate papers (except for the answers, when appropriate) in connection with each proceeding. Except

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<sup>2</sup> Respondent's appearance of counsel (filed January 18, 2012) in the cancellation is noted and entered.

for the respective answers, only a single copy of each paper should be filed by the parties in the parent case, and each paper should bear the case caption as set forth above. The cases may be presented on the same record and briefs.

### Suspension

Inasmuch as respondent/applicant filed a statement (on January 18, 2012, in each proceeding) that it does not object to suspension of proceedings pending opposer/petitioner's *ex parte* appeal of the pleaded application, opposer/petitioner's motion to suspend is granted. See Trademark Rule 2.127(a). Accordingly, proceedings are suspended pending final disposition of the *ex parte* appeal for application Serial No. 85214746.

Within twenty days after the final determination of the *ex parte* appeal, opposer/petitioner must so notify the Board so that this case can be called up for appropriate action (including, if appropriate resetting the time for applicant/respondent to file an answer in each case).<sup>3</sup> During the suspension period the Board shall be notified of any address changes for the parties or their attorneys.

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<sup>3</sup> If the *ex parte* appeal is decided against opposer/petitioner and the pleaded application is abandoned, then, when opposer/petitioner notifies the Board of the disposition of the appeal, opposer/petitioner may wish to file a motion to amend the complaints along with amended complaints in each proceeding.