UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Opposition No. 91210282
[PARENT CASE]

Opposition No. 91214537

Cancellation No. 92059220

Red Bull GmbH

v.

Stockmarket Burger Inc.

Jennifer Krisp, Interlocutory Attorney:

Cancellation No. 92059220 is before the Board for consideration of the motion, filed June 27, 2014 by respondent Stockmarket Burger Inc. ("Stockmarket"), to suspend the cancellation proceeding pending the disposition of Opposition No. 91214537. The motion has been fully briefed.

On March 13, 2014, the Board consolidated Opposition Nos. 91210282 and 91214537.[1] In its present motion requesting suspension, Stockmarket asserts that the outcome of Opposition No. 91214537 will likely have a bearing on the issues before the Board in the cancellation (brief, p. 1, 3).

In opposing Stockmarket's motion, Red Bull GmbH ("Red Bull") argues against suspension, and asserts that the cancellation should, instead, be

[1] The parent case is Opposition No. 91210282.

consolidated with Opposition Nos. 91210282 and 91214537. Red Bull cites, *inter alia*, judicial economy, and the desire to avoid taking duplicative discovery and testimony.

Authorities and findings

It is the policy of the Board to suspend proceedings when the parties are involved in another proceeding which may be dispositive of or may have a bearing on the Board proceeding. *See* Trademark Rule 2.117(a). The determination of whether suspension pending another proceeding is appropriate is solely within the discretion of the Board. *See* TBMP § 510.02(a) (2014).

Similarly, consolidation is also discretionary with the Board, and may be ordered upon motion granted by the Board, or upon stipulation of the parties approved by the Board, or upon the Board's own initiative. *See, e.g.*, *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993); and *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991). The Board may find that consolidation of proceedings prior to joinder of issue is appropriate. *See* TBMP § 511 (2014).

In general, 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); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d at 1154; *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense that may be gained from consolidation

against any prejudice or inconvenience that may be caused thereby. *See* TBMP § 511 (2014).

The record reflects that the cancellation and the two oppositions involve the same parties, and that Stockmarket's marks that are involved in the three proceedings are similar. Red Bull asserts a claim, in each proceeding, of priority and likelihood of confusion pursuant to Trademark Act Section 2(d), and relies on the same four pleaded registrations and/or common law marks.

With respect to the procedural postures of the proceedings, Stockmarket's motion to suspend was fully briefed prior to July 25, 2014, the date on which the Board issued an order suspending the consolidated oppositions pending Stockmarket's June 26, 2014 motion for partial judgment on the pleadings. Stockmarket filed its motion in the oppositions just prior to midway through the discovery period. Thus, in the oppositions, discovery has not closed and trial has not commenced. Accordingly, the cancellation, and consolidated Opposition Nos. 91210282 and 91214537, are not in the disparate positions that Stockmarket emphasizes. More to the point, Stockmarket's arguments that consolidation is inappropriate because the cancellation and the oppositions are "not even close to the same stage of litigation" and "in completely different stages of litigation" (reply brief, p. 2) are unsupported by the record.

With respect to prejudice, Stockmarket cites unnecessary delay and disruption of the trial schedule. It does not, however, point to any specific prejudice of the type that would impact its ability to proceed or would outweigh

the benefits of consolidation, such as the inability to take discovery, or to secure the evidence and testimony necessary to prepare its case. Moreover, that Stockmarket has not filed its answer to the petition to cancel does not, in itself, render consolidation unsuitable.

Finally, Stockmarket's argument that its motion for judgment on the pleadings may be dispositive of the oppositions and may render consolidation moot, is inaccurate. As a general matter, where the Board renders a decision affecting (*i.e.*, disposing of) fewer than all consolidated proceedings, it ordinarily resumes litigation and resets dates, as appropriate, in the proceeding(s) that are not affected by the decision.

In view of the record and circumstances, the Board finds that consolidation of the cancellation with the oppositions is appropriate. Cancellation No. 92059220 is hereby consolidated into previously-consolidated Opposition No. 91210282. To the extent that Stockmarket requests suspension of the cancellation pursuant to Trademark Rule 2.117(a), its motion is denied.

Opposition No. 91210282 remains the "parent case." With the exception of Stockmarket's answer (see below), the parties should continue to file only a single copy of all motions and papers in the parent case only, captioning all consolidated proceedings and listing the parent case first.

Stockmarket's answer to the petition to cancel

Stockmarket is allowed until <u>thirty (30) days from the mailing date of this order</u> in which to file its answer to the petition to cancel.

Stockmarket is directed to file said answer in Cancellation No. 92059220. This directive is a sole exception to the instruction set forth above (and in the Board's March 13, 2014 order in Opposition No. 91210282) that all submissions must be filed in parent opposition Opposition No. 91210282.

Suspension

These consolidated proceedings are suspended (the oppositions remain suspended) pending the Board's determination of Stockmarket's motion for judgment on the pleadings. The motion will be decided in due course.