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

Proceeding	91211392
Party	Plaintiff Hallmark Licensing, LLC
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Submission	Motion to Consolidate
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Date	09/24/2014
Attachments	HALLMARK Motion to Consolidate.PDF(65138 bytes )



14, 2014, which Opposition was assigned No. 91215884.

5. HII filed an Answer in Opposition No. 91211392 on August 7, 2013 and an Answer in Opposition No. 91215884 on May 16, 2014.

6. On February 18, 2014, the Board suspended Opposition No. 91211392 and on July 15, 2014, the Board suspended Opposition No. 91215884, in both cases pending final determination of a related civil action between the parties filed in the U.S. District Court for the Western District of Arkansas.

7. HLL recently filed a notice of voluntary dismissal without prejudice of the above-referenced civil action and on September 5, 2014 the Order of Dismissal without prejudice was entered. Today, Opposer notified the Board of same and requested resumption of Opposition Nos. 91211392 and 91215884.

8. Opposition Nos. 91211392 and 91215884 both involve: (i) the same parties; (ii) nearly identical marks (HALLMARK and HALLMARK925); (iii) common questions of fact and law; (iv) similar, if not identical, allegations under Trademark Act Section 2(d) and the same alleged damage to Opposer; and (v) both arise from the same set of occurrences or series of occurrences.

9. Pursuant to TBMP Section 511 and Fed. R. Civ. P. 42(a), the above opposition proceedings should be consolidated into a single joint opposition proceeding.

#### MEMORANDUM IN SUPPORT

“When cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases.” TBMP Section 511; Fed. R. Civ. P. 42(a). “In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort and expense which may be gained from consolidation, against the prejudice or inconvenience which may be caused thereby.” TBMP Section 511. Prejudice or inconvenience may result from consolidation of TTAB inter parties proceedings in cases where, for example, the proceedings to be consolidated

are at different stages, see Lever Brothers Co. v. Shaklee Corp., 214 USPQ 654 (TTAB 1982), the marks at issue differ, see Envirotech Corp. v. Solaron Corp., 211 USPQ 724 (TTAB 1981) or the issues in the proceedings differ, see Izod, Ltd. v. La Chemise Lacoste, 178 USPQ 440 (TTAB 1973).

Consolidation in this instance will promote savings of time, effort and expense for all parties involved. A single joint opposition proceeding will decrease the likelihood of duplicative and expensive discovery, testimony and hearings. This is especially true with respect to written discovery, oral depositions and oral testimony. In the absence of a joint proceeding, HII, HLL and/or third parties will be required to produce the same witnesses and documents on multiple occasions to multiple parties in an effort to address the same or substantially identical issues. Consolidation will allow the parties to attempt to schedule joint oral depositions and oral testimony hearings, thereby saving all parties time, effort and expense. Moreover, consolidation will promote administrative economy and efficiency in that the TTAB will not be required to allocate twice the resources to handle the same or substantially identical issues that will inevitably arise in both opposition proceedings. A joint proceeding will also ensure that there are no inconsistent rulings or holdings that may confuse or cloud the identical issues inherent in both opposition proceedings.

No party will be prejudiced by consolidation of these proceedings. Indeed, as stated above, consolidation will save all parties and the TTAB time, effort and expenses. Additionally, the opposition deadlines (upon resumption by the Board) are anticipated to be identical in both oppositions. No initial disclosures or discovery has been served or taken on behalf of any party in either proceeding.

Because the facts and issues in each opposition proceeding are identical and involve common parties and substantially identical marks, these opposition proceedings should be consolidated. This will avoid parallel litigation, resulting in more efficient allocations of time, effort and expenses for both the parties and the TTAB.

CONCLUSION

WHEREFORE, Opposer Hallmark Licensing, LLC prays that the TTAB enter an order consolidating the opposition proceedings styled Hallmark Licensing, LLC v. Hallmark Industries, Inc., Opposition No. 91211392 and Hallmark Licensing, LLC v. Hallmark Industries, Inc., Opposition No. 91215884, and for such other and further relief the TTAB deems just and proper.

September 24, 2014

Respectfully submitted,



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**ATTORNEYS FOR HALLMARK LICENSING,  
LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Opposer's Motion to Consolidate Opposition Proceedings and Memorandum in Support Thereof has been served on counsel for Applicant by first class mail, postage pre-paid, as follows:

Matthew H. Swyers  
The Trademark Company PLLC  
344 Maple Avenue West, Suite 151  
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Dated: September 24, 2014

  
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Mark A. Paskar