

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

Mailed: February 3, 2014

Opposition Nos. 91212519 (parent)
91212521
91212522

Hint Incorporated

v.

Sunrise Apparel Group, LLC

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

Now before the Board are applicant's motions (filed November 18, 2013, in Opposition Nos. 91212519 and 91212522) to amend the respective subject applications and answers; opposer's motions (filed December 26, 2013, in Opposition Nos. 91212519 and 91212522) for an extension of time; applicant's motions (filed January 29, 2014, in each proceeding) to consolidate Opposition Nos. 91212519, 91212521 and 91212522; and the parties' stipulated protective agreement (filed January 29, 2014, in each proceeding).

Motions to Amend

On December 16, 2013, without knowledge of the motions filed in Opposition Nos. 91212519 and 91212522, the Board

Opposition Nos. 91212519, 91212521 & 91212522

denied without prejudice applicant's motion to amend the application and answer involved in Opposition No. 91212521. Inasmuch as the nature of the amendment filed in each proceeding is the same, the motions to amend filed in Opposition Nos. 91212519 and 91212522 are **denied** without prejudice on the same reasoning as explained in Opposition No. 91212521.¹

Motions to Consolidate

The Board has reviewed the records in Opposition Nos. 91212519, 91212521, and 91212522, and concludes that these cases involve identical parties, identical marks, and common questions of law and fact. It would therefore be appropriate to consolidate these proceedings pursuant to Fed. R. Civ. P. 42(a). Accordingly, applicant's motions to consolidate are **granted** as well-taken.² The above-noted proceedings are hereby consolidated and may be presented on

¹ The parties may view a copy of the December 16th order issued in Opposition No. 91212521 at the following URL:
<http://ttabvue.uspto.gov/ttabvue/v?pno=91212521&pty=OPP&eno=7>

It is noted that opposer's briefs in opposition to the motions to amend were late. The deadline for responding is calculated from the date of service of the motion -not from the date the motion is received in the Office. See Trademark Rule 2.127(a). Inasmuch as the ambiguity in the response date likely resulted from applicant's use of postal mail for filing, the Board hopes the issue is put to rest now that applicant is using ESTTA for filing. Continued filing with ESTTA is strongly encouraged. See TBMP § 110.09.

² Additionally, it is noted that opposer stated (in a February 3, 2014, telephone call with the Board in which opposer inquired about the status of the three cases) that it would not contest the motions to consolidate.

the same record and briefs. See *Dating DNA LLC v. Imagini Holdings Ltd.*, 94 USPQ2d 1889, 1893 (TTAB 2010). The Board file will be maintained in Opposition No. 91212519 as the "parent" case. Except for amended answers, if filed, the parties should no longer file separate papers in connection with each proceeding; 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.³

Protective Agreement

The stipulated protective agreement is **noted**. The parties are referred, as appropriate, to TBMP §§ 412.03 (3d ed. rev.2 2013) (Duration of Protective Order), 412.04 (Filing Confidential Materials With Board), and 412.05 (Handling of Confidential Materials by Board). The parties are advised that only confidential or trade secret information should be filed pursuant to a stipulated protective agreement. Such an agreement may not be used as a means of circumventing Trademark Rules 2.27(d) and (e), which provide, in essence, that the file of a published application or issued registration, and all proceedings

³ A motion to amend the pleadings is an exception to the general rule that all filings should be made in the "parent" case. In view of the footnote in the motions to consolidate, it is presumed that applicant will file renewed motions to amend each answer; if so, those motions should be filed in their respective case files.

relating thereto, should otherwise be available for public inspection.

Schedule

The motions to extend are **granted** to the extent modified herein. Dates for the consolidated proceedings are **reset** on the following schedule.⁴

Initial Disclosures Due	2/12/2014
Expert Disclosures Due	6/12/2014
Discovery Closes	7/12/2014
Plaintiff's Pretrial Disclosures	8/26/2014
Plaintiff's 30-day Trial Period Ends	10/10/2014
Defendant's Pretrial Disclosures	10/25/2014
Defendant's 30-day Trial Period Ends	12/9/2014
Plaintiff's Rebuttal Disclosures	12/24/2014
Plaintiff's 15-day Rebuttal Period Ends	1/23/2015

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

⁴ This is the schedule in Opposition No. 91212521 as that schedule was reset upon prior determination of the motion to amend therein. The consolidated schedule substantially contemplates opposer's consented motions to extend.