

TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

CME

Mailed: July 25, 2016

Opposition No. 91214578 (Parent) - 85956925
Opposition No. 91226723¹
Cancellation No. 92063552

LeMans Corporation

v.

LeMar Xavier Lewis

Christen M. English, Interlocutory Attorney:

The above-captioned cases now come up on LeMan Corporation's ("LeMans") motion to consolidate, filed April 19, 2016. The motion is fully briefed.

LeMans argues that the cases should be consolidated because they involve the same parties, "similar marks for similar coverage" and "common issues of fact and law." 58 TTABVUE 2. Mr. Lewis opposes the motion arguing that his three involved marks are "different"; that he has been using "one 'Thoro' mark for over 10 years"; and that LeMan's request to consolidate "is a direct attempt to terminate [his] entire project" and "remov[e] competition in its womb."² 60 TTABVUE 2.

¹ Mr. Lewis filed two answers in Opposition No. 91226723. The Board treats the answer filed at 7 TTABVUE as Mr. Lewis's operative pleading in this proceeding. The answer at 6 TTABVUE will be given no further consideration. Mr. Lewis is advised not to file duplicate papers in these proceedings.

² Mr. Lewis also argues the merits of LeMan's claims. The Board has not considered such arguments because whether LeMan's can prevail on its claims is a matter to be determined at final hearing after trial or upon a properly filed motion for summary judgment.



08-11-2016

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Opposition Nos. 91214578 and 91226723 and Cancellation No. 92063552

When cases involving common questions of law and fact are pending before the Board, the Board may order consolidation of the cases. *See* Fed. R. Civ. P. 42(a). Here, all three proceedings involve: (1) LeMans and Mr. Lewis; (2) the mark THORO for various clothing items;³ and (3) the same five pleaded registrations for the mark THOR for clothing and other goods. LeMan's claims in Opposition Nos. 91214578 and 91226723 are also identical. Specifically, in each opposition, LeMan's has pleaded claims of priority and likelihood of confusion and lack of bona fide use of the involved mark as of the filing date of the subject use-based application. In Cancellation No. 92063552, LeMans has alleged a claim for false suggestion of a connection as well as a claim for abandonment based on the allegation that the involved mark "was not in use in commerce for each of the goods recited in Respondent's Goods as of the filing date of Respondent's Statement of Use (October 21, 2012) for Registration No. 3,206,498, nor as of the date of the filing of this Petition." Cancellation No. 92063552, 1 TTABVUE 8, ¶ 14.

In view of the foregoing, the above-captioned proceedings involve common questions of law and fact such that consolidation will avoid duplication of effort and will avoid unnecessary costs. Accordingly, LeMan's motion to consolidate is GRANTED, and the proceedings are consolidated and may be presented on the same record and briefs. *See Hilson Research Inc. v. Soc'y for Human Res. Mgmt.*, 27 USPQ2d 1423, 1424, n.1 (TTAB 1993); *Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1619, n.1 (TTAB 1989).

³ The mark involved in Cancellation No. 92063552 is a stylized version of the mark THORO.

Opposition Nos. 91214578 and 91226723 and Cancellation No. 92063552

The record will be maintained in Opposition No. 91214578 as the “parent” case. The parties should no longer file separate papers or submissions in connection with each proceeding,⁴ but instead should file only a single copy of each submission in the parent case. Each submission should bear the case caption set forth above and the parent case should be designated as such by following it with: “(parent).”

Consolidated cases do not lose their separate identity because of consolidation. Each proceeding retains its separate character and requires entry of a separate judgment. The single decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings and a copy of the final decision shall be placed in each proceeding file. *See Dating DNA LLC v. Imagini Holdings Ltd.*, 94 USPQ2d 1889, 1893 (TTAB 2010).

Notwithstanding the foregoing, Mr. Lewis has not filed an answer in Cancellation No. 92063552, and on July 25, 2016, the Board issued an order entering a notice of default against Mr. Lewis and allowing him thirty days to show cause why a default judgment should not be entered against him. *See Exhibit A* attached hereto.

Accordingly, these consolidated proceedings are suspended pending Mr. Lewis’s response to the show cause order issued in Cancellation No. 92063552.⁵

⁴ There is one exception. A separate complaint and answer must be filed in each proceeding.

⁵ Mr. Lewis’s motion, filed June 22, 2016 in Opposition No. 91226723, to extend his time to answer discovery requests is noted. Consideration of the motion is deferred pending a determination regarding the notice of default issued in Cancellation No. 92063552.

Exhibit A

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Cancellation No. 92063552

LeMans Corporation

v.

LeMar X. Lewis

Amy Matelski, Paralegal Specialist:

An answer to the petition to cancel was due (as last reset) in this proceeding on July 13, 2016. Inasmuch as it appears that no answer has been filed, nor has Respondent filed a motion to further extend its time to answer, a notice of default is hereby entered against Respondent under Fed. R. Civ. P. 55(a).¹

Respondent is allowed until thirty days from the mailing date of this order to show cause why judgment by default should not be entered against Respondent in accordance with Fed. R. Civ. P. 55(b)(2).

¹ Inasmuch as respondent is in default, the parties' obligations to hold the discovery conference, and to serve initial disclosures, are effectively stayed. See TBMP § 312.01.

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