

91217154
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

Mailed: March 20, 2015

Opposition No. 91217154

Nasty Pig, Inc.

v.

Janoskians LLC

Ann Linnehan, Interlocutory Attorney

This case now comes up for consideration of (1) Opposer's motion to consolidate (filed January 30, 2015) and (2) Opposer's motion to compel (filed January 30, 2015). Both motions are fully briefed.

Motion to Consolidate

Opposer seeks an order consolidating this proceeding with Opposition No. 91217154.

When actions involving common questions of law and/or fact are pending before the Board, it may order those actions consolidated. See Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); *World Hockey Ass'n v. Tudor Metal Products Corp.*, 185 USPQ 246 (TTAB 1975).

After reviewing the records in both proceedings, the Board finds that consolidation of these proceedings is not appropriate at this time. Some of

the involved claims are different and the plaintiff in each proceeding is different.

In view thereof, Opposer's motion to consolidate is denied.

Motion to Compel

Opposer seeks an order directing Applicant to copy and mail the documents responsive to Opposer's requests for production to Opposer's counsel's offices in New York, N.Y.¹

In support of its motion, Opposer argues that it timely served its document production by mailing a disc containing the production to Applicant's counsel's offices as requested by Applicant, but that Applicant now "refuses to reciprocally produce its responsive documents to Opposer's counsel's offices in New York." Opposer states that Applicant has even rejected "Opposer's generous offer to pay for all necessary copying and shipping expenses." Opposer states that Applicant is "taking the inequitable and hypocritical position that Applicant's documents can be inspected and copied only at Applicant's offices located in Vernon, California – approximately 2, 500 miles across the country. Opposer contends that "such an undertaking would cause Opposer tremendous burden and expense."

Under Trademark Rule 2.120(d)(2) the production of documents and things will be made at the place where the documents and things are usually

¹ The Board finds that there is no need for a telephone conference on this motion. Opposer's request for such conference is denied.

kept, or where the parties agree, or where and in the manner which the Board, upon motion, orders.

The record indicates that the parties have not stipulated to the copying of documents and the forwarding of such documents to the requesting party. In this instance, Applicant is only obliged, under the rules, to make the documents and materials available to Opposer for inspection and copying where the documents are stored (California). While parties in Board cases generally extend each other the courtesy of producing requested documents by copying the documents and forwarding them to the other party, and the Board encourages Applicant to do so in this instance, the Board denies Applicant's request to order Applicant to do so. The Board notes that parties are expected to discuss such arrangements in their mandatory discovery conference. The record indicates that such an arrangement was not made.

In view thereof, the motion to compel is denied.

The Board deems the filing of the motion to compel to have tolled the running of dates herein. Proceedings are hereby resumed.

Dates remain as set in the Board's order of February 26, 2015.²

² Opposer's counsel contacted the Board recently indicating that the parties were engaged in another discovery dispute besides the one presented in this motion. The Board does not appreciate piecemeal litigation. Opposer may file another motion to compel if it unable to resolve the dispute with Applicant after the required good faith effort to do so.

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