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

Proceeding	92062831
Party	Defendant Western Rise, LLC
Correspondence Address	WESTERN RISE LLC 94 CARDINAL ROAD SE, WHITE, GA 30184 UNITED STATES
Submission	Motion to Consolidate
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Date	01/08/2016
Attachments	Motion to Consolidate.pdf(160374 bytes )

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

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Abercrombie & Fitch Trading Co.,	)	
	)	Cancellation No. 92062831
Petitioner,	)	
	)	Registration No. 4,800,735
v.	)	Date of Issue: August 25, 2015
	)	
	)	Subject Mark:
	)	
Western Rise, LLC,	)	
	)	
Registrant.	)	
	)	
	)	

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**STIPULATED MOTION TO CONSOLIDATE**

Registrant Western Rise, LLC (“Western Rise”), pursuant to T.B.M.P. § 511 hereby submits its Stipulated Motion to Consolidate. Petitioner Abercrombie & Fitch Trading Co. (“Abercrombie & Fitch”) stipulates to the consolidation of Cancellation No. 92062831 with Opposition No. 91221038.

**I. Factual Background**

This proceeding (the “Cancellation Proceeding”) should be consolidated with the related opposition proceeding styled as *Abercrombie & Fitch Trading Co. v. Western Rise, LLC* (Opposition No. 91221038), which also is currently pending before the Board (the “Opposition Proceeding”). As demonstrated below, consolidating these two related proceedings will save time, effort, and expense, without any prejudice or inconvenience the parties or the Board.

Abercrombie & Fitch commenced this Cancellation Proceeding on December 14, 2015, seeking cancellation of Registration No. 4800735 for “On-line retail store services featuring clothing” in Class 35. Registration 4800735 is shown below:



Reg. No. 4800735

Abercrombie & Fitch filed the Opposition Proceeding against Western Rise on March 12, 2015, opposing the registration of Serial No. 86293112 and Serial No. 86292364, both for “Clothing, namely, shirts, pants, shorts, coats, jackets, t-shirts, hats, socks, fishing waders, footwear, underwear, bandanas, belts, scarves, gloves, ear muffs” in Class 25. Serial Nos. 86293112 and 86292364 are shown below:



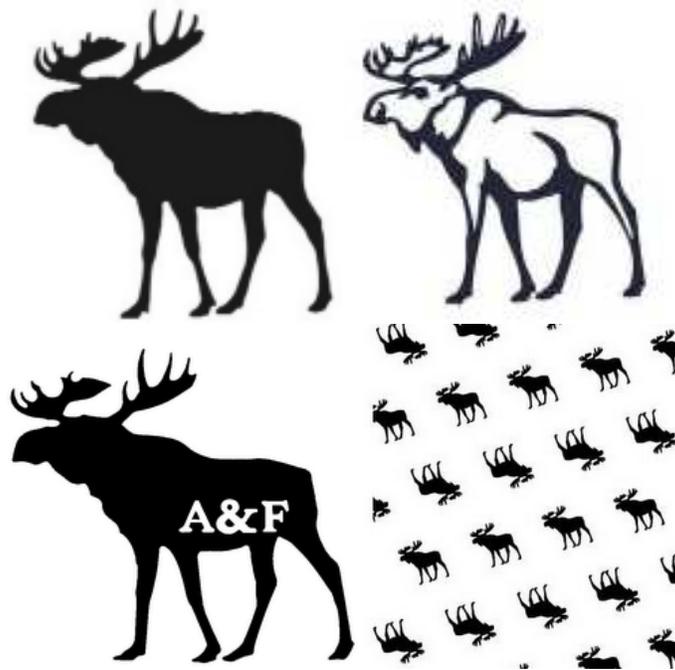
Serial No. 86293112



**WESTERN RISE**

Serial No. 86292364

In both proceedings, Abercrombie & Fitch’s claims are based on: (a) priority and likelihood of confusion between Abercrombie & Fitch’s moose designs marks, which it has registered in various forms (the “Abercrombie & Fitch Marks”) and Western Rise’s marks; and (b) dilution of the Abercrombie & Fitch Marks. Abercrombie & Fitch’s registrations for the Abercrombie & Fitch Marks cover the marks depicted below:



Western Rise filed an Answer, Defenses, and Counterclaim in the Opposition Proceeding, and Abercrombie & Fitch filed an Answer to Western Rise’s First Amended Counterclaim on November 23, 2015.<sup>1</sup> Western Rise filed its

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<sup>1</sup> Western Rise amended its Answer, Defenses, and Counterclaim on June 15, 2015.

Answer and Defenses in the Cancellation Proceeding on January 6, 2015. The parties have not yet commenced discovery in either proceeding.

## **II. Argument and Citation to Authority**

Rule 511 of the Trademark Manual of Board Procedures provides as follows, in pertinent part:

When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense, which may be gained from consolidation, against any prejudice or inconvenience that may be caused thereby. Although identity of the parties is another factor considered by the Board in determining whether consolidation should be ordered, it is not always necessary. Consolidation is 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.

Consolidation is proper here because both of the proceedings involve common issues of law or fact. The proceedings each involve the same design marks or design elements. The Western Rise design utilized in the marks that are the subject of the Opposition Proceeding is identical to the design utilized in the mark that is the subject of the Cancellation Proceeding, and each of the Abercrombie & Fitch Marks asserted in the Cancellation Proceeding are also asserted in the Opposition Proceeding. Further, at center stage in both cases is whether the Western Rise marks and the Abercrombie and Fitch Marks are likely to be confused, whether the Abercrombie & Fitch Marks are famous, and whether

the Western Rise marks dilute the Abercrombie & Fitch Marks. In addition, both proceedings implicate the same areas of law and will require the submission of the same evidence and testimony from the same witnesses.

Moreover, the two proceedings are appropriate for consolidation because: (1) there is identity of the parties; (2) there is no material risk of prejudice or possible confusion if the cases are consolidated; (3) consolidation will not result in an unfair advantage to any party; (4) consolidation will conserve the parties' resources by reducing the expense of litigating these proceedings separately; and (5) the proceedings are currently in virtually the same procedural posture, as the pleadings are closed but the parties have not yet commenced any discovery. Conversely, if consolidation is not granted, the parties will be forced to litigate, and this Board will have to adjudicate, substantially identical issues in two separate actions. This is just the result – duplicative costs and potentially inconsistent results – that T.B.M.P. § 511 seeks to avoid.

### **III. Conclusion**

Consolidation of the two proceedings will save time, effort, and expense, without any prejudice or inconvenience to the parties or the Board. Consolidation also will avoid the possibility of conflicting judgments. Accordingly, Western Rise respectfully requests that its Motion for Consolidate be granted.

{Signatures of counsel appear on the next page.}

Respectfully submitted this 8th day of January, 2016.

ARNALL GOLDEN GREGORY LLP

/ J. Tucker Barr /

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Stipulated to by counsel for Petitioner:

\_/Susan M. Kayser/\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **STIPULATED MOTION TO CONSOLIDATE** has been served on counsel for Petitioner by mailing said copy on January 8, 2016 by first class mail, postage prepaid to:

Susan M. Kayser  
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Washington, D.C. 20001-2113

/ J. Tucker Barr /

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Attorney for Registrant