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

Proceeding	91221319
Party	Defendant Neat Print, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of United States Trademark Application Serial No. 86331626

Riverstone Ventures LLC,)	
)	
Opposer,)	Opposition No.: 91221319
)	
v.)	
)	
Neat Print, Inc.)	
)	
Applicant.)	

APPLICANT’S RESPONSE TO OPPOSER’S MOTION TO
CONSOLIDATE OPPOSITION PROCEEDINGS

COMES NOW, Neat Print, Inc. (“Applicant”), by and through its attorneys, and hereby submits this Response to Opposer’s Motion to Consolidate Opposition Proceeding Numbers 991221316, 991221408, 991221407, 991221406, 991221405, 991221404, 991221403, 991221319, 991221318, 991221317 and 991221315 (the “Oppositions”) brought by Opposer, Riverstone Ventures LLC.

BACKGROUND

1. In April of 2015, Opposer filed eleven (11) Notices of Opposition to eleven (11) different trademark applications owned by Applicant. Opposer’s bases of opposition are identical or substantially identical in all eleven (11) Oppositions, namely, priority and a likelihood of confusion. Also, Opposer claims all of Applicant’s use-based trademarks are incapable of functioning as source-identifiers for Applicant’s goods.

2. On May 8, 2015, Applicant, filed Answers to Opposer's Notices of Opposition and denied and/or left Opposer with establishing the averments upon which Opposer has predicated its claim of damage under the Lanham Act.
3. On May 27, 2015, Opposer moved this Board to consolidate the Oppositions.
4. Applicant objects to consolidation of the Oppositions.

ARGUMENT

When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases.¹ 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.²

Consolidation of the present Oppositions will not avoid duplication of effort concerning factual issues and will not avoid unnecessary costs and delays. This is true for at least four different reasons. First, the numerous trademarks at issue in the Oppositions are distinct and different. More specifically, Opposer is relying on more than twenty-four (24) different trademarks to oppose Applicant's applications. Also, Applicant's trademark applications seek registration of eleven (11) different trademarks. In fact, the only similarity in Applicant's marks is that seven (7) of the marks include the

¹ See Fed. R. Civ. P. 42 (a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991).

² *Dating DNA LLC v. Imagini Holdings Ltd.*, 94 USPQ2d 1889, 1893 (TTAB 2010); *Envirotech Corp. v. Solaron Corp.*, 211 USPQ 724, 726 (TTAB 1981) (consolidation denied as possibly prejudicial to defendant where defendant's involved marks were not all the same); *Izod, Ltd. v. La Chemise Lacoste*, 178 USPQ 440, 441-42 (TTAB 1973) (consolidation denied where issues differed).

word “awesome.” Second, Opposer alleges different dates of first use for the dozens of marks in which Opposer relies herein. Third, Applicant’s common law rights in and to Applicant’s marks were acquired on different dates. Finally, Applicant uses, or intends to use, its marks independently of one another, and as different clothing or fashion lines. No common relationship exists between any of Applicant’s marks and no common relationship has been alleged by Opposer.

It is clear that although Opposer’s legal theories of Opposition are substantially identical, the facts of each Opposition are distinct and different. Consolidation of the Oppositions will not save time, effort and/or expense. Consolidation of the Oppositions will only complicate matters and increase confusion, effort and costs.

Furthermore, the consolidation of the Oppositions will cause an unfair prejudice to Applicant.³ Opposer references more than twenty-four (24) different trademarks to oppose eleven (11) trademark applications owned by Applicant. Also, none of Applicant’s marks, of Applicant’s eleven (11) trademark applications, are the same. Clearly, evidence in one Opposition would not be relevant to the issues in any other Opposition and this fact would create confusion and unfair prejudice to Applicant. In

³ See *Envirotech Corp. v. Solaron Corp.*, 211 USPQ 724 (TTAB 1981) (Board denied consolidation as possibly prejudicial to defendant where defendant's involved marks were not all the same and the issue was likelihood of confusion.); See also, *9 C. Wright & A. Miller, Federal Practice and Procedure*, § 2382 (Civil 2d. 1995) (A motion to consolidate may be denied if the common issue is not a principal one, if it will cause delay in one of the cases, or will lead to confusion or prejudice in the trial of a case.); *Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65, 81(D.N.J. 1993) (“Where the evidence in one case is not relevant to the issues in the other, consolidation would create a likelihood of prejudice by confusing the issues.”); *St. Bernard General Hosp., Inc. v. Hospital Service Assoc. Of New Orleans, Inc.*, 712 F.2d 978, 989 (5th Cir. 1983) (“consolidation is improper if it would prejudice the rights of the parties.”).

other words, consolidation of the Oppositions will result in a prejudicial commingling and confusion of the evidence and the Board's findings in each of the Oppositions.

CONCLUSION

In short, there exists a difference of such character and extent in the issues involved in these matters as to militate against consolidation. Opposer's perceived efficiency in consolidating the Oppositions should not be permitted to prevail in light of the prejudicial results upon Applicant.

Frijouf, Rust & Pyle, P.A.



06-10-15

Date

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CERTIFICATE OF SERVICE

It is hereby certified that this response was furnished by United States Mail postage prepaid upon Joan Optican Herman of HOVEY WILLIAMS LLP of 10801 Mastin Blvd., Suite 1000 Overland Park, Kansas 66210, this 10th day of June 2015.



Daniel R. Frijouf