UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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EJW

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Opposition No. 91221315
Opposition No. 91221316
Opposition No. 91221317
Opposition No. 91221318
Opposition No. 91221319
Opposition No. 91221403
Opposition No. 91221404
Opposition No. 91221405
Opposition No. 91221406
Opposition No. 91221407
Opposition No. 91221408

Riverstone Ventures LLC

v.

Neat Print Inc.

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

These cases now come up for consideration of Opposer's contested motion (filed May 27, 2015) to consolidate the eleven above-referenced proceedings,[1] which has been filed in each said proceeding. For the reasons discussed below, Opposer's motion is granted in part and denied in part.

Opposer requests that all eleven proceedings be consolidated on the grounds that all of them involve the same parties and common questions of law, thus, having a single, consolidated proceeding would promote judicial economy and avoid

[1] The Board exercises its discretion to review the motion before the reply due date.

unnecessary costs and delay. In particular, Opposer points out that all proceedings are grounded on the claim of likelihood of confusion, and that Applicant's answers and affirmative defenses are identical.

In opposition, Applicant argues that the trademarks at issue are different, Opposer's and Applicant's dates of first use of their respective marks are different, the dates on which Applicant acquired common law rights in its marks differ, and Applicant uses or intends to use its marks independently of one another, as different clothing or fashion lines. Because of the variety of facts involved, Applicant argues that consolidation will only complicate matters, rather than decrease the parties' efforts and costs, and prejudice Applicant.

When cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases. *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). 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 which may be caused thereby. 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. *See, e.g.*, *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993).

At the outset, the Board notes that the marks in four of the applications, *i.e.*, those involved in Opposition Nos. 91221315 (YOU CAN'T SCARE ME), 91221406 (SOON TO BE), 91221407 (THIS GUY LOVES HIS WIFE), and 91221408 (WORLD'S OKAYEST) are totally different from each other and do not contain any common terms with Applicant's other applied-for marks, all of which include the term "AWESOME." Although the parties are the same and each proceeding is based on Opposer's claim of likelihood of confusion (except one, which also includes a claim under Sections 1, 2 and 45 of the Trademark Act), the differences among the marks provide sufficient reason to deny the motion for consolidation. *See 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). In view thereof, Opposer's motion to consolidate is **denied** with respect to Opposition Nos. 91221315, 91221406, 91221407, and 91221408. Accordingly, these four proceedings shall move forward on the separate trial schedules set forth in the Board's institution orders in each case.

As regards the other opposition proceedings, each proceeding involves a mark which begins with the term "AWESOME" next to a term for a relative, *i.e.*, UNCLE, PAPA, GRANDPA, AUNT, GRANDMA, HUSBAND, and WIFE. Additionally, all of those applications involve the identical or virtually identical goods, namely, "clothing, namely shirts, t-shirts, tank tops, tops, sweat shirts, hoodies, jerseys, pullovers, jackets and headwear [or hats]." Furthermore, Opposer claims rights in

the identical mark for each of the opposed applications and asserts, in each opposition, claims under Sections 2(d) and 1, 2 and 45 of the Trademark Act. Therefore, not only are the parties to Opposition Nos. 91221316, 91221317, 91221318, 91221319, 91221403, 91221404, and 91221405 identical, but the facts and legal issues involved are the same or related. In view of the foregoing, the Board finds that consolidation of the seven above-identified proceedings is appropriate. Accordingly, Opposer's motion is **granted** with respect to Opposition Nos. 91221316, 91221317, 91221318, 91221319, 91221403, 91221404, and 91221405, and these seven proceedings are hereby **CONSOLIDATED** and may be presented on the same record and briefs. *See Hilson Research Inc. v. Society for Human Resource Management, supra*; and *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

The Board's file for these proceedings will be maintained in Opposition No. **91221316** as the "parent case." From this point forward, only a single copy of all motions and papers should be filed, and each such motion or paper should be filed in the parent case only, but the caption should list all consolidated proceeding numbers with the "parent case" listed first.[2]

Although these cases are now consolidated, each proceeding retains its separate character and requires entry of a separate judgment. The decision on the

[2] The parties should promptly inform the Board of any other Board proceedings or related cases within the meaning of Fed. R. Civ. P. 42, so that the Board can consider whether further consolidation is appropriate.

consolidated cases shall take into account any differences in the issues raised by the respective pleadings; a copy of the decision shall be placed in each proceeding file.

Summary: Trial Dates Reset

Opposer's motion to consolidate is denied in part, and granted in part, as discussed herein. As is customary when proceedings are consolidated, the Board resets the trial dates in accordance with the most recently filed consolidated proceeding, which, in this case is Opposition No. 91221405. Accordingly, the trial schedule set forth in the Board's April 8, 2015, institution order in that opposition now applies to all of the consolidated proceedings. The schedule is set forth below, for the parties' convenience.

Deadline for Discovery Conference	6/17/2015
Discovery Opens	6/17/2015
Initial Disclosures Due	7/17/2015
Expert Disclosures Due	11/14/2015
Discovery Closes	12/14/2015
Plaintiff's Pretrial Disclosures	1/28/2016
Plaintiff's 30-day Trial Period Ends	3/13/2016
Defendant's Pretrial Disclosures	3/28/2016
Defendant's 30-day Trial Period Ends	5/12/2016
Plaintiff's Rebuttal Disclosures	5/27/2016
Plaintiff's 15-day Rebuttal Period Ends	6/26/2016

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. *See* Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.

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