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

Proceeding	91222005
Party	Plaintiff Robert Kirkman, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ROBERT KIRKMAN, LLC,

Opposer,

-against-

STEVE THEODOROU and PHILLIP
THEODOROU,

Applicants.

Opposition Nos. 91222005,
91222719

OPPOSER’S MOTION TO CONSOLIDATE PROCEEDINGS

Robert Kirkman, LLC (“Kirkman”), by its attorneys, hereby moves the Trademark Trial and Appeal Board (the “Board”) for an order consolidating the above-identified proceedings concerning Application Serial Nos. 86/418,856 and 86/564,355, both for the mark THE WALKING DEAD and owned by identical parties. A full statement of the grounds for the motion and the memorandum in support of the motion, as required by 37 C.F.R. § 2.127(a), are set forth below.

BACKGROUND

Kirkman is the owner of all rights in and to THE WALKING DEAD trademark (“THE WALKING DEAD Mark”) as used in connection with its series of comic books and graphic novels and, by Kirkman’s licensee AMC Network Entertainment LLC, in connection with The Walking Dead television series (the “Series”). The Series, now in its fourth season of production, is the most watched drama in cable television history. Kirkman owns numerous U.S. trademark registrations for THE WALKING DEAD Mark, including in International Classes 9, 16, and 41.

On October 9, 2014, Steve and Phillip Theodorou filed Application Serial No. 86/418,856 based on an intent to use the mark THE WALKING DEAD in connection with “cigarillos, cigars, ashtrays, match boxes, matches, lighters for smokers” in International Class 34.

On March 15, 2015, Steve and Phillip Theodorou filed Application Serial No. 86/564,355 based on an intent to use the mark THE WALKING DEAD in connection with “Candles for lighting; Candles for night lights; Perfumed candles; Scented candles” in International Class 4.

On May 19, 2015, Kirkman filed a Notice of Opposition against Application Serial No. 86/418,856. That opposition proceeding was instituted as Opposition No. 91222005.

On July 8, 2015, Kirkman filed a Notice of Opposition against Application Serial No. 86/564,355. That opposition proceeding was instituted as Opposition No. 91222719.

In both opposition proceedings, Kirkman relies on its ownership of THE WALKING DEAD Mark and alleges that Applicants’ THE WALKING DEAD marks, when used on or in connection with the identified goods or services, are likely to cause confusion with Kirkman’s prior-used and registered THE WALKING DEAD Mark.

This motion seeks to consolidate Kirkman’s two proceedings against Applicants’ THE WALKING DEAD marks into a single proceeding based on the discovery and trial schedules set by the Board in connection with the last-instituted opposition proceeding, Opposition No. 91222719.

Kirkman previously sought related Applicants’ consent to consolidation of different proceedings involving THE WALKING DEAD Mark during a discovery call on which both Applicants were present. Applicants refused Kirkman’s request for consent, but did not offer any reasons why consolidation would be inappropriate. Based on this prior refusal, Kirkman

presumes that Applicants would not consent to consolidation of Opposition Nos. 91222005 and 91222719.

ARGUMENT

Kirkman seeks consolidation of these two proceedings now pending against Applicants and their THE WALKING DEAD marks because the proceedings involve identical parties, identical marks, and common questions of law and fact. The Board may, in its discretion, consolidate pending cases in such circumstances. *See* Fed. R. Civ. P. 42(a); *see also Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 U.S.P.Q.2d 1154 (T.T.A.B. 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 that may be caused thereby.” TBMP § 511.

Here, consolidating the two proceedings filed by Kirkman against Applicants’ THE WALKING DEAD marks will save time, effort and expense and will not prejudice or inconvenience either the parties or the Board. First, each proceeding involves the same parties. Moreover, Steve and Phillip Theodorou share the same owner mailing address, and the correspondent mail and email address is the same for both of the proceedings.

Second, each proceeding involves identical issues of law and identical marks. In each opposition, Kirkman objects to registration of Applicants’ THE WALKING DEAD marks on the grounds that (1) there is a likelihood of confusion between those marks and Kirkman’s prior-used and registered THE WALKING DEAD Mark and (2) that Applicants’ THE WALKING DEAD marks are likely to dilute the fame and distinctiveness of Kirkman’s THE WALKING DEAD Mark. Due to the identity of the parties and the underlying legal questions, consolidation will save time, effort and expense because it will obviate the need for either party to duplicate

discovery, testimony or arguments in two separate proceedings. It also will obviate the need for the Board to consider the identical evidence, testimony and arguments in two separate proceedings. Thus, consolidation will save time, effort and expense.

Third, both proceedings are in their early stages. Therefore, resetting the dates in the earlier-instituted opposition proceeding to match those in Opposition No. 91222719 will not unduly delay the earlier proceedings or prejudice either Applicants or Kirkman.

The fact that the two opposition proceedings involve applications to register THE WALKING DEAD in different International Classes is not a basis for denying consolidation. All of Applicants' involved goods and services are related to the products and services in connection with which Kirkman has long used its THE WALKING DEAD Mark. Thus, the different classes of goods at issue in the opposition proceedings should not unduly complicate a consolidated proceeding.

CONCLUSION

For the reasons stated above, Kirkman respectfully requests that the Board grant its motion to consolidate Kirkman's two proceedings currently pending against Applicants and their THE WALKING DEAD marks: Opposition Nos. 91222005 and 91222719. Kirkman also respectfully requests that the Board set the schedule for the consolidated proceedings to match that of the last-instituted opposition proceeding.

Dated: New York, New York
July 22, 2015

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSER'S MOTION TO CONSOLIDATE PROCEEDINGS was sent by first class mail postage pre-paid to Applicants' Correspondents of Record, this 22nd day of July 2015, as follows:

STEVEN THEODOROU
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EWING, NEW JERSEY 08638-1539



Jennifer Insley-Pruitt