

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Mailed: January 5, 2016

Opposition No. 91224268 (Parent)

Opposition No. 91224272

AFAB Industrial Services, Inc.

v.

Pac-West Distributing NV LLC

**Denise M. DelGizzi,
Chief Clerk of the Board:**

It has come to the Board's attention that Opposition Nos. 91224268 and 91224272 involve the same parties and the same claims. The Board also notes that Applicant has filed its answer in each proceeding.

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).

In this case, the parties to the proceedings are identical, and the issues are the same. While the proceedings involve different applications with different marks, the nature of the marks is not at issue. Opposer alleges fraud and no lawful use in commerce as grounds for opposition in each proceeding. Therefore, the Board finds it appropriate to consolidate these proceedings in order to consider the claims concurrently. Accordingly, Opposition Nos. 91224268 and 91224272 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 file will be maintained in Opposition No. **91224268** as the “**parent case**.” From this point on, 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 caption all consolidated proceeding numbers, listing the “parent case” first.¹

The Board notes that Applicant filed (on December 30, 2015) similar motions for summary judgment in each proceeding. In view of the consolidation of the proceedings, Opposer only needs to file a single response brief in the parent case. A reply brief, if filed, should also be filed in the parent case only.

Despite being consolidated, each proceeding retains its separate character and requires entry of a separate judgment. The decision on the consolidated cases shall

¹ 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.

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.

The consolidated proceedings herein are suspended pending disposition of Applicant's motions for summary judgment.² Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. *See* Trademark Rule 2.127(d).

In addition to tolling the time to respond to outstanding discovery requests, suspension of proceedings tolls the time for parties to make required disclosures. *See* TBMP § 528.03.

The motions for summary judgment will be decided in due course.

² Applicant's change of correspondence address (filed December 11, 2015 in Opposition No. 91224268) is noted. The Board records have been updated to reflect the change.