

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: December 9, 2015

Opposition No. 91224750
Opposition No. 91224791

Threshold Enterprises, Ltd.

v.

Glanbia Nutritionals (Ireland) Limited

Amy Matelski, Paralegal Specialist:

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On November 6, 2015, opposer served its notice of opposition. On November 10, 2015, Opposer filed an amended notice of opposition.

Pursuant to Fed. R. Civ. P. 15(a)(1), made applicable to Board proceedings by Trademark Rule 2.116(a), a party may amend its pleading once as a matter of course within 21 days after serving it, or if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Fed. R. Civ. P. 12(b), (e) or (f), whichever is earlier. *See* Trademark Rule 2.107/2.115; TBMP § 507.01. However, as a practical matter, because the time to answer set by the Board's institution order is 40 days, a plaintiff may amend its complaint once as a matter of course beyond the initial 21 days from

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serving it until the defendant files either an answer or a motion under Fed. R. Civ. P. 12(b), (e) or (f). *See* TBMP § 507.02.

Opposer's amended notice of opposition was filed as a matter of course, and is accepted as opposer's operative pleading in this proceeding. *See* Fed. R. Civ. P. 15(a)(1)(A) and (B).

Consolidation

On November 10, 2015, Opposer filed a motion to consolidate Opposition Nos. 91224750 and 91224791. The Board notes initially that Applicant has not yet filed its answer in each proceeding for which consolidation is sought.

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); and *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991).

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It is noted that the parties to these proceedings are identical and the issues are similar or related. Accordingly, the motion to consolidate is **granted**. Opposition Nos. 91224750 and 91224791 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. **91224750** as the “parent case.” From this point on, only a single copy of any motion and any paper 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. However, inasmuch as these proceedings are being consolidated prior to joinder of the issues in each proceeding, Applicant should file a separate answer in each opposition before commencing the practice of filing a single copy of all motions and papers in the parent case.¹

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

Accordingly, answer, conferencing, discovery and trial dates are reset as follows:

Time to Answer	1/9/2016
Deadline for Discovery Conference	2/8/2016
Discovery Opens	2/8/2016

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.

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Initial Disclosures Due	3/9/2016
Expert Disclosures Due	7/7/2016
Discovery Closes	8/6/2016
Plaintiff's Pretrial Disclosures	9/20/2016
Plaintiff's 30-day Trial Period Ends	11/4/2016
Defendant's Pretrial Disclosures	11/19/2016
Defendant's 30-day Trial Period Ends	1/3/2017
Plaintiff's Rebuttal Disclosures	1/18/2017
Plaintiff's 15-day Rebuttal Period Ends	2/17/2017

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. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.