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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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THIS OPINION IS NOT CITABLE AS PRECEDENT OF THE T.T.A.B.

Mailed: November 21, 2005

Opposition No. 91164081
Cancellation No. 92044396

Fort James Operating Company and Georgia Pacific Corporation

v.

Brawny Plastics, Inc. and Nextep, Inc.

Opposition No. 91165601
Opposition No. 91165736
Opposition No. 91165737
Opposition No. 91167043

Fort James Operating Company and Georgia Pacific Corporation

v.

Samuel Louis Paul

Before Seeherman, Hohein and Hairston, Administrative Trademark Judges.

By the Board:

On August 22, 2005, opposers/petitioners Fort James Operating Company and Georgia Pacific Corporation ("FJ/GP") filed a request for reconsideration of the Board's order dated July 19, 2005, that consolidated Opposition No. 91164081 and Cancellation No. 92044396 and suspended

proceedings pending final disposition of a civil action between FJ/GP and applicant/respondent Nextep, Inc. The motion has been fully briefed.[1] We have considered FJ/GP's reply brief as it clarifies the issues before us. *See* Trademark Rule 2.127(a).

Generally, the premise underlying a motion for reconsideration, modification or clarification under Trademark Rule 2.127(b) is that, based on the facts before it and the prevailing authorities, the Board erred in reaching the order or decision it issued. See TBMP § 518 (2d ed. rev. 2004). A request for reconsideration may not be used to introduce additional evidence, and may not be devoted simply to a reargument of points presented in the requesting party's brief on the original motion.

In their request for reconsideration, FJ/GP seek reconsideration of that part of the order suspending the cancellation action. FJ/GP assert that "suspension [is] not warranted in the cancellation proceeding because the [civil action] is not likely to have an impact on the validity determination at issue in the cancellation proceeding." *Petitioners' Reply Brief,* p. 1, ft. 1. FJ/GP also contend

[1] Applicants/Respondents' Nextep, Inc. and Brawny Plastics, Inc.'s stipulated motion (filed September 9, 2005) to extend their time to respond to FJ/GP's request for reconsideration is hereby granted. The parties should note that it is no longer necessary to file three copies of a stipulated motion with the Board.

that the Board is uniquely qualified to decide the validity issues. These arguments were raised and considered on the original motion to suspend and do not persuade us to change our decision on that motion.

FJ/GP also contend that Brawny Plastics, Inc. has "so far successfully resisted" FJ/GP's efforts to engage in discovery as a non-party to the civil action and as a party to the Board proceedings. *Petitioners' Reply Brief,* p. 4. While parties to Board proceedings are expected to cooperate during discovery, see TBMP § 408.01 (2d ed. rev. 2004), and while Fed. R. Civ. P. 26(g)(2) also addresses a party's discovery obligations in a civil action, the fact that Brawny Plastics, Inc. may be a non-party to the civil action does not change the fact that the disposition of the civil action will likely have a bearing on the Board cases.

Accordingly, FJ/GP's request for reconsideration of the Board's July 19, 2005 order is denied.

Consolidation

When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. Such consolidation may be ordered on the Board's own initiative. See Fed. R. Civ. P. 42(a); and TBMP § 511 (2d ed. June 2003).

All of the cases captioned in this order involve the mark BRAWNY. Nextep, Inc. owns a registration for the mark

and has been assigned one of the applications therefor. Nextep's owner and secretary, Samuel Louis Paul,[2] has filed the other four applications. Plaintiffs in every case are Georgia Pacific Corporation and its wholly-owned subsidiary, Fort James Operating Company. Plaintiffs assert rights to the mark BRAWNY and marks using the term in combination with other words or designs. Common issues of fact and law are thus present in all of the cases.

Accordingly, these cases are hereby consolidated.

The cases may now be presented on the same record and briefs. Papers should bear the numbers of each of the consolidated cases, although Opposition No. 91164081 is treated as the "parent" case, and most of the papers filed by the parties, or issued by the Board, will be placed only in the file of the parent case. The parties need not file a copy for each consolidated case; a single copy, bearing the numbers of each consolidated case, normally is sufficient.

These consolidated proceedings remain suspended pending final disposition of the civil action between the parties.[3]

The Board may make biannual inquiry as to the status of the civil action. If, however, the case is resolved, the

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[2] In Opposition No. 91165736, applicant's middle name is spelled "Luis" instead of "Louis," as it is in the other cases. USPTO records have be changed to reflect the spelling as "Louis."

[3] Opposition No. 91167043, which has not previously been suspended, is hereby suspended.

parties should notify the Board so that this case may be called up for appropriate action. During the suspension period the Board should be notified of any address changes for the parties or their attorneys.