

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: May 4, 2010

Cancellation No. 92052137  
Cancellation No. 92052140

Austin Precision Products,  
Inc. d/b/a LaRue Tactical  
("LaRue Tactical")

v.

Richard E. Swan

**George C. Pologeorgis, Interlocutory Attorney:**

It has come to the attention of the Board that Cancellation Nos. 92052137 and 92052140 involve the same parties and common questions of law and fact. It would therefore be appropriate to consolidate these proceedings pursuant to Fed. R. Civ. P. 42(a).

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, for example, Wright & Miller, Federal Practice and Procedure: Civil § 2383 (2004);*

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*Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154  
(TTAB 1991) (Board's initiative).

Accordingly, the above-noted cancellation proceedings are hereby consolidated and may be presented on the same record and briefs.

The Board file will be maintained in Cancellation No. 92052137 as the "parent" case. The parties should no longer file separate papers in connection with each proceeding. Only a single copy of each paper should be filed by the parties and each paper should bear the case captions as set forth above.<sup>1</sup>

The Board also notes respondent's motions (filed April 8, 2010) in each of these now consolidated cancellation proceedings to suspend the cancellation proceedings pending the final determination of a civil action in the United States District Court for the District of Massachusetts.<sup>2</sup> The Board further notes petitioner's oppositions to each of respondent's motion to suspend.

Respondent has submitted a copy of the complaint in the civil action.

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<sup>1</sup> The parties should promptly inform the Board in writing of any other related *inter partes* proceedings. See Fed. R. Civ. P. 42(a).

<sup>2</sup> Civil Action No. 1:09-CV-10034, styled *Atlantic Research Marketing Systems, Inc. v. Austin Precision Products, Inc. d/b/a Lacrue Tactical*, U.S. District Court for the District of Massachusetts, filed on or about January 12, 2009.

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By Board order dated April 9, 2010, the Board granted respondent's motion to suspend filed in Cancellation No. 92052137 as well taken.<sup>3</sup>

Likewise, respondent's motion for suspension of the Board proceedings filed in Cancellation No. 92052140 is also granted as well taken. It is the policy of the Board to suspend proceedings when the parties are involved in a civil action which may be dispositive of or have a bearing on the Board case.<sup>4</sup> See Trademark Rule 2.117(a).

A review of the complaint in the civil case indicates that a decision by the district court could be dispositive of, or have a bearing on, the issues in these now consolidated cancellation proceedings. While petitioner argues that the parties in the civil action are not the same as the parties in these consolidated proceedings, the Board nonetheless notes that the civil action concerns issues

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<sup>3</sup> The Board notes that subsequent to the issuance of its order in Cancellation No. 92052137 granting respondent's motion to suspend, petitioner filed an opposition to respondent's motion on April 28, 2010. Even if the Board were now to consider petitioner's response, the Board would have reached the same decision set forth in its April 9, 2010 order for the reasons stated in the instant order.

<sup>4</sup> Moreover, to the extent that a civil action in a Federal district court involves issues in common with those in a Board proceeding, the district court decision would be binding on the Board, whereas the Board decision is merely advisory to the district court. See *American Bakeries Co. v. Pan-O-Gold Baking Co.*, 2 USPQ2d 1208 (D.C. Minn. 1986). Further, Board decisions are appealable to the district court. See Section 21 of the Trademark Act, and *Goya Foods, Inc. v. Tropicana Products Inc.*, 846 F.2d 848, 6 USPQ2d 1950, 1953 (2d Cir. 1988).

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regarding the validity of respondent's subject registrations herein. Indeed, petitioner herein has filed a counterclaim in the district court action contesting the validity of respondent's registrations on virtually the same grounds asserted in these now consolidated cancellation proceedings. In view thereof, the decision of the district court, including a decision on petitioner's asserted counterclaim in the civil action, may have a direct bearing on the issues presented in these consolidated cancellation proceedings and, for this reason, respondent's motion to suspend filed in Cancellation No. 92052140 is also granted.

Accordingly, these now consolidated proceedings are suspended pending final disposition of the civil action identified above.

Within twenty days after the final determination of the civil action, the interested party 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.