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

|                        |   |
|------------------------|---|
| Proceeding             | 92052234  |
| Party                  | Plaintiff<br>Bose Corporation   |
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| Submission             | Motion to Consolidate   |
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| Signature              | /Tashia Bunch/  |
| Date                   | 07/09/2010  |
| Attachments            | Motion to Consolidate.pdf ( 7 pages )(113127 bytes )  |

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

In the matter of Registration No. 3,705,744  
For the Mark INNOVATIVE LIFESTYLE UNQUESTIONABLE VALUE  
Registered on November 3, 2009

Bose Corporation,  
Petitioner,

v.

jWin Electronics Corporation,  
Registrant.

Cancellation No. 92052234

And

In the matter of Registration No. 3,709,147  
For the Mark INNOVATIVE LIFESTYLE  
Registered on November 10, 2009

Bose Corporation,  
Petitioner,

v.

jWin Electronics Corporation,  
Registrant.

Cancellation No. 92052251

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**CONSENTED MOTION TO CONSOLIDATE CANCELLATIONS**

**Motion**

Pursuant to Fed. R. Civ. P. 42(a), made applicable through Trademark Rule § 2.116(a), and as incorporated into Section 511 of the Trademark Trial and Appeal Board Manual of Procedure, Petitioner, Bose Corp. (“Bose”) moves the Trademark Trial and Appeal Board (“Board”) for an order consolidating Cancellation Nos. 92052234 and 92052251 and resetting

dates to those of the most recently instituted case. As the facts below demonstrate, both proceedings involve common questions of law and fact and their consolidation will not prejudice Registrant, jWin Electronics Corp. ("jWin") but rather, will save both parties and the Board considerable time, effort and expense. Counsel for Bose has secured the express consent of Hyunjung Kim, counsel for jWin Electronics Corp., for the filing of this motion. jWin Electronics Corp. further consented to e-mail service for any papers relating to this consented motion to consolidate.

### **Facts**

On November 3, 2009, jWin's application for INNOVATION LIFESTYLE UNQUESTIONABLE VALUE was registered under U.S. Registration No. 3,705,744. The registration covers "Audio amplifiers; Audio cassette decks for automobiles; Audio cassette recorders; Audio circuit boards; Audio equipment for vehicles, namely, stereos, speakers, amplifiers, equalizers, crossovers and speaker housings; Audio mixers; Audio processing equipment, namely, limiters and compressors; Audio speaker enclosures; Audio speakers; Audio tape recorders; Audio-video receivers; Blank audio cassettes; Blank audio tapes; Blank CD-ROMs for sound or video recording; Blank digital audio tapes; Blank video cassettes; Blank video tapes; Car video recorders; Children's video tapes; Combination video players and recorders; Computer hardware and computer software programs for the integration of text, audio, graphics, still image and moving pictures into an interactive delivery for multimedia applications; Computer programs for editing images, sound and video; Computer software and firmware for games of chance on any computerized platform, including dedicated gaming consoles, video based slot machines, reel based slot machines, and video lottery terminals; Computer software for manipulating digital audio information for use in audio media

applications; Computer software for use in the encryption and decryption of digital files, including audio, video, text, binary, still images, graphics and multimedia files; Computer software for use in the safeguarding of digital files, including audio, video, text, binary, still images, graphics and multimedia files; Computer software to control and improve computer and audio equipment sound quality; Computer software to enhance the audio-visual capabilities of multimedia applications, namely, for the integration of text, audio, graphics, still images and moving pictures; Computerized video game tables for gaming purposes, namely, a computerized video craps game table; Computerized video table games for gaming purposes; Digital audio players; Digital audio tape players; Digital audio tape recorders; Digital photo frames for displaying digital pictures, video clips and music; Digital video disc drives; Digital video recorders; Downloadable films and tv programs provided via a video-on-demand; Downloadable MP3 files, MP3 recordings, online discussion boards, web casts, pod casts featuring music, audio books and news broadcasts; Electric audio playback units with lights and speakers; Electronic products for the generation, measurement, and analysis of audio signals, namely, audio analyzers; Electronic products for the manipulation of the frequency, time, and amplitude characteristics of audio signals, namely, audio processors; Receivers for audio and video; Software to control and improve audio equipment sound quality; Sound and video recording and playback machines; Stand alone video gaming machines, namely, a video craps game machine; Telecommunications and data networking hardware, namely, devices for transporting and aggregating voice, data, and video communications across multiple network infrastructures and communications protocols; TV and video converters; Video cameras; Video capture cards; Video cassette recorders; Video circuit boards; Video disk players; Video disks and video tapes with recorded animated cartoons; Video display cards; Video displays mounted in eyeglasses;

Video displays that may be worn on the body; Video processors; Video projectors; Video screens; Video tape recorders; Video transmission apparatus; Video-telephones; Videotapes and video disks recorded with animation; Visual recordings and audio visual recordings featuring music and animation,” in International Class 9.

On March 23, 2010, Bose filed a petition for cancellation of jWin's INNOVATIVE LIFESTYLE UNQUESTIONABLE VALUE Registration No. 3,705,744 with the Trademark Trial and Appeal Board under Cancellation Proceeding No. 92052234, based on Bose's prior use and registration of the mark LIFESTYLE, as represented in U.S. Registration Nos. 1,622,251 and 2,108,847.

On November 10, 2009, jWin also obtained a registration for a similar mark, INNOVATIVE LIFESTYLE, under U.S. Registration No. 3,709,147. The registration covers goods that are similar – and in some cases identical - to the goods registered in jWin's INNOVATIVE LIFESTYLE UNQUESTIONABLE VALUE registration, namely: “Audio amplifiers; Audio cassette decks for automobiles; Audio cassette players; Audio cassette recorders; Audio circuit boards; Audio electronic components, namely, surround sound systems; Audio equipment for vehicles, namely, stereos, speakers, amplifiers, equalizers, crossovers and speaker housings; Audio mixers; Audio processing equipment, namely, limiters and compressors; Audio speaker enclosures; Audio speakers; Audio tape recorders; Visual recordings and audio visual recordings featuring music and animation,” in International Class 9.

On March 23, 2010, Bose filed a petition for cancellation of jWin's INNOVATIVE LIFESTYLE registration under Cancellation Proceeding No. 92052251, which is also based on Bose's prior use and registration of the LIFESTYLE mark, as represented in U.S. Registration Nos. 1,622,251 and 2,108,847.

On April 28, 2010, jWin filed answers to the petition in both proceedings.

**Legal Standard and Memorandum in Support of Motion**

The Board may order consolidation of proceedings that involve common questions of law or fact. *See* TBMP §511. Whether proceedings share common questions of law or fact is determined in part by the similarity of the marks that are the subject of the cancellations, the similarity of the goods or services, the similarity of the pleaded marks asserted by the petitioner, and the identity of the parties involved. *See 8440 LLC v. Midnight Oil Co. LLC*, 59 USPQ2D 1541 (TTAB 2001); *World Hockey Ass'n v. Tudor Metal Prods. Corp.*, 185 USPQ 246 (TTAB 1975); *Bigfoot 4x4 Inc. v. Bear Food Inc.*, 5 USPQ2d 1444 (TTAB 1987). In determining whether to consolidate the 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. *See* TBMP §511.

Bose's Cancellation Proceeding Nos. 92052334 and 92052251 against jWin contain similar questions of law and fact. Both proceedings involve the same petitioner, Bose Corporation, and the same registrant, jWin Electronics Corporation. Both proceedings are pending against highly similar marks: INNOVATIVE LIFESTYLE and INNOVATIVE LIFESTYLE UNQUESTIONABLE VALUE. The Board has in the past consolidated proceedings where the Applicant's marks were similar, but not identical. *See World Hockey Ass'n v. Tudor Metal Prods. Corp.*, 185 USPQ 246 (TTAB 1975) (Board consolidated proceedings involving Applicant's WORLD HOCKEY and WORLD HOCKEY CUP for equipment sold as a unit for use in playing a hockey-type board game.)

Both proceedings also involve registrations that cover related (and in some cases identical) goods in International Class 9. The goods in U.S. Registration No. 3,709,147 for

INNOVATIVE LIFESTYLE are almost entirely subsumed by the identification of goods in U.S. Registration No. 3,705,744 for INNOVATIVE LIFESTYLE UNQUESTIONABLE VALUE. The remaining goods in the INNOVATIVE LIFESTYLE registration are highly similar where they too are audio- and video-related products. The prior rights and pleaded registrations relied upon by Bose are identical in each proceeding. Thus, the records of both proceedings and the legal and factual inquiries in each case will be highly similar, if not the same. When the challenged marks and the asserted marks are, respectively, substantially similar, the Board has determined that the relevant proceedings “may be presented on the same record without appreciable inconvenience or confusion.” *World Hockey*, 185 USPQ at 248. Indeed, in this type of situation, where issues of law and fact are common to both proceedings, consolidation is “equally advantageous to both parties in the avoidance of duplication of effort, loss of time, and the extra expense involved in conducting the proceedings separately.” *Id.*

Consequently, Bose respectfully requests that the Board consolidate both proceedings and allow them to proceed on one factual record, in order to avoid inconsistent adjudications and the expense and administrative burden of duplicative proceedings.

Neither party will be prejudiced by the consolidation of Cancellation Nos. 92052234 and 92052251. Far from being prejudiced, both parties will realize substantial savings in time, effort, and cost. jWin additionally consents to the filing of this motion for consolidation.

### **Conclusion**

For the foregoing reasons, Bose respectfully requests that the Board grant Bose's consented-to motion and order the consolidation of Cancellation Nos. 92052234 and 92052251 into one proceeding, and that the discovery and trial dates as set in the most recently instituted

matter, Cancellation No. 92052251 be the prevailing trial schedule for the consolidated proceeding.

Respectfully submitted,

Date: July 9, 2010 \_\_\_\_\_

/Tashia Bunch/ \_\_\_\_\_

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing CONSENTED MOTION TO CONSOLIDATE CANCELLATIONS has this 8th day of July, 2010 been served via e-mail to Registrant (by its consent) at its principal place of business at: [hyunkim@jwin.com](mailto:hyunkim@jwin.com)

Hyunjung Kim, Esq.  
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2 Harbor Park Drive  
Port Washington, NY 11050

/Tashia Bunch/ \_\_\_\_\_

Tashia Bunch