

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

mc/gcp

Mailed: July 20, 2010

Cancellation No. 92052392
Cancellation No. 92052394
Cancellation No. 92052396
Cancellation No. 92052398
Cancellation No. 92052400
Cancellation No. 92052402

Under Armour, Inc.

v.

Emory L. Williams

George C. Pologeorgis, Interlocutory Attorney:

It has come to the attention of the Board that Cancellation No. 92052394 and the already consolidated Cancellation Nos. 92052392, 92052396, 92052398, 92052400 and 92052402 involve the same parties and common questions of law and fact.¹ 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

¹ The Board notes petitioner's motion to consolidate cancellation proceeding no. 92052394 with the already consolidated cancellation proceedings filed on June 25, 2010.

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the Board's own initiative. See, for example, Wright & Miller, *Federal Practice and Procedure: Civil* §2383 (2004); *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 continue to be maintained in Cancellation No. 92052392 as the "parent" case. The parties should no longer file separate papers in connection with each proceeding, except as noted below. 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.²

The Board further notes that on June 25, 2010 petitioner filed a motion for leave to amend each of the petitions to cancel in these consolidated proceedings. Petitioner filed an amended petition to cancel for each corresponding consolidated cancellation proceeding concurrently with its motion to amend.

Under Fed. R. Civ. P. 15(a), a party may amend its pleading once as a matter of course within 21 days after

²The parties should promptly inform the Board in writing of any other related *inter partes* proceedings. See Fed. R. Civ. P. 42(a).

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service of a responsive pleading. Petitioner filed its motion for leave to amend within twenty-one days of each answer filed by respondent in these consolidated proceedings.

Accordingly, petitioner's motion for leave to amend is **granted** as a matter of course under Fed. R. Civ. P. 15(a) and each amended petition to cancel is now the operative pleading in each corresponding cancellation proceeding.

In view thereof, respondent is allowed **thirty days** from the mailing date of this order in which to file an answer or otherwise respond to each amended petition to cancel. Respondent should file its answers in each of the corresponding cancellation proceedings. Moreover, the Board notes that petitioner filed its now operative amended petitions to cancel only in the parent case of these consolidated proceedings, i.e., Cancellation No. 92052392. For purposes of clarity of the record, however, petitioner should immediately re-file each of its amended petitions to cancel in the appropriate corresponding cancellation proceeding of these consolidated cases.

Trial dates for these consolidated proceedings are reset as follows:

Deadline for Discovery Conference	9/18/2010
Discovery Opens	9/18/2010

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Initial Disclosures Due	10/18/2010
Expert Disclosures Due	2/15/2011
Discovery Closes	3/17/2011
Plaintiff's Pretrial Disclosures	5/1/2011
Plaintiff's 30-day Trial Period Ends	6/15/2011
Defendant's Pretrial Disclosures	6/30/2011
Defendant's 30-day Trial Period Ends	8/14/2011
Plaintiff's Rebuttal Disclosures	8/29/2011
Plaintiff's 15-day Rebuttal Period Ends	9/28/2011

As a final matter, the Board notes that on June 8, 2010 respondent filed a Section 7 amendment requesting to delete several goods and to amend the identification of goods in the subject registration of Cancellation No. 92052394, i.e., Registration No. 3780641. The Board further notes that, on June 24, 2010, the Post Registration Branch of the USPTO denied respondent's Section 7 amendment on the ground that the registration is currently the subject of a Board proceeding. Indeed, as previously noted by the Board, an amendment to a registration which is subject to a Board proceeding, as is the case here, may only be filed with the Board for the Board's consideration.

If respondent wishes to amend its identification of goods, respondent must file a consented motion to amend with the Board for the Board's consideration. Respondent is advised, however, that if respondent files a motion to amend without the consent

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of petitioner, the Board will defer consideration of the amendment until final decision, or until the case is decided upon summary judgment. *See Space Base Inc. v. Stadis Corp.*, 17 USPQ2d 1216 (TTAB 1990) (motion to amend identification of goods deferred).