

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

Mailed: May 10, 2011

Cancellation No. 92052988 (parent)

Ilcsi Szepito Fuvek
Biokozmetikai Kft.

v.

Attila Koronczay

-----and-----

Cancellation No. 92053021 (child)

Ilcsi Szepito Fuvek
Biokozmetikai Kft.

v.

Eminence Organic Skin Care
Inc.

**Robert H. Coggins,
Interlocutory Attorney:**

These cancellation proceedings have been suspended pending responses from petitioner after counsel for petitioner was permitted to withdraw from representation. On April 29, 2011, petitioner filed a response.¹

¹ The filing fails to indicate proof of service on respondents as required by Trademark Rule 2.119 and explained more fully in the body of this order. In order to expedite this matter, respondents are directed to the following URL where they may view a copy of the filing:

<http://ttabvueint.uspto.gov/ttabvue/v?pno=92052988&pty=CAN&eno=13>

Strict compliance with Trademark Rule 2.119 is required by petitioner in all future papers filed with the Board.

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Before taking up petitioner's response, the Board addresses the issue of consolidation.

Consolidation

It has come to the Board's attention that respondents in Cancellation Nos. 92052988 and 92053021 are related, respondents are represented by the same counsel, petitioner is the same in each proceeding, and the proceedings involve similar marks and common questions of law and fact.

Fed. R. Civ. P. 42(a), as made applicable by Trademark Rule 2.116(a), provides with respect to consolidation of proceedings that, when actions involve a common question of law or fact, the Board may order a joint hearing or trial of any or all of the matters in issue in the actions, it may order all the actions consolidated, and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Consolidation is discretionary with the Board, and may be ordered upon the Board's own initiative. *See, for example, Wright & Miller, Federal Practice and Procedure: Civil* §2383 (2004); and *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991) (Board's initiative).

It is adjudged that in Cancellation Nos. 92052988 and 92053021 there is a sufficient commonality of factual issues that consolidation is appropriate. Consolidation will avoid

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duplication of effort concerning factual and scheduling issues and will thereby avoid unnecessary costs and delays.

Accordingly, Cancellation Nos. 92052988 and 92053021 are hereby consolidated and may be presented on the same record. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989), and *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1432 (TTAB 1993).

From this date forward, Cancellation No. 92052988 is designated as the "parent" case in which all papers shall be filed. The parties should no longer file separate papers in connection with each proceeding. As a general rule, from this point on, only a single copy of any paper or motion should be filed herein, but that copy should bear each proceeding number in its caption as shown hereinabove. An exception to the general rule involves filing briefs on the case. See Trademark Rule 2.128.

Despite being consolidated, each proceeding retains its separate character. 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.

The parties are instructed to promptly inform the Board of any other related cases within the meaning of Fed. R. Civ. P. 42.

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Representation

By way of its April 29th response, petitioner states that it will represent itself in these (consolidated) proceedings. In view thereof, the April 20, 2011 show cause order issued in Cancellation No. 92053021 is discharged.

Pro Se Information

The Board notes that petitioner is representing itself. Petitioner may do so. However, it should be noted that while Patent and Trademark Rule 11.14 permits an individual to represent a partnership of which he or she is a partner, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in a Board proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. In addition, as the impartial decision maker, the Board may not provide legal advice, though it may provide information as to procedure. If petitioner does not retain new counsel, then petitioner will have to familiarize itself with the rules governing this proceeding. Strict compliance with the Trademark Rules of Practice and all other applicable rules is expected of all parties, even those representing themselves.

The Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil

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Procedure govern the conduct of these consolidated cancellation proceedings. Petitioner may refer to the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice, both available via the USPTO website, www.uspto.gov. The TTAB homepage provides electronic access to these and other materials including the Board's standard protective order, answers to frequently asked questions, the ESTTA filing system² (<http://estta.uspto.gov>) for Board filings, and TTABVUE (<http://ttabvue.uspto.gov/ttabvue>) for case status and prosecution history.

As mentioned earlier, at footnote 1, the service requirements are set forth in Trademark Rule 2.119. Trademark Rules 2.119(a) and (b) and require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board.

² Use of electronic filing with ESTTA is strongly encouraged, especially since petitioner is not in the U.S. This electronic file system operates in real time. The filing party is also provided with a confirmation number that the filing has been received.

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Consequently, copies of all papers³ which petitioner (or, indeed either party) may subsequently file in this proceeding, must be accompanied by a signed statement indicating the date and manner in which such service was made. Strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

The Board will accept, as *prima facie* proof that a party filing a paper in a Board *inter partes* proceeding has served a copy of the paper upon every other party to the proceeding, a statement signed by the filing party, or by its attorney or other authorized representative, clearly stating the date and manner in which service was made. This written statement should take the form of a "certificate of Service" which should be patterned as follows:

The undersigned hereby certifies that a true and correct copy of the foregoing [*insert title of document*] was served upon [*insert name of party served*] by forwarding said copy, via overnight courier to: [*insert name and address*].

The certificate of service must be signed and dated. See TBMP § 113.

Each party is responsible for ensuring that the Board has that party's current correspondence address. If a party fails to notify the Board of a change of address, with the result that the Board is unable to serve correspondence on

³ The form of submissions is governed by Trademark Rule 2.126. See TBMP § 106.03 (3d ed. 2011).

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the party, default judgment may be entered against the party. See TBMP § 117.07.

The parties may agree to the email service option now available under Trademark Rule 2.119(b)(6) ("Electronic transmission when mutually agreed upon by the parties").⁴ This option is encouraged since petitioner is not located in the U.S. Should the parties decide to continue using traditional service options (e.g., by overnight courier), the parties should consider agreeing at least to courtesy email notification when any paper is served.

Schedule

Proceedings are resumed and trial dates are reset on the schedule below.

Initial Disclosures Due	6/1/2011
Expert Disclosures Due	9/29/2011
Discovery Closes	10/29/2011
Plaintiff's Pretrial Disclosures	12/13/2011
Plaintiff's 30-day Trial Period Ends	1/27/2012
Defendant's Pretrial Disclosures	2/11/2012
Defendant's 30-day Trial Period Ends	3/27/2012
Plaintiff's Rebuttal Disclosures	4/11/2012
Plaintiff's 15-day Rebuttal Period Ends	5/11/2012

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 taking of testimony. Trademark Rule 2.125. Briefs shall be

⁴ The additional five days available under Trademark Rule 2.119(c) for traditional service modes (e.g., via overnight courier) is not available for email service.

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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.