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

Proceeding	92053604
Party	Plaintiff Excelsior-Henderson Motorcycles
Correspondence Address	MATTHEW H SWYERS THE SWYERS LAW FIRM PLLC 344 MAPLE AVE W, STE 389 VIENNA, VA 22180 UNITED STATES mswyers@swyerslaw.com
Submission	Motion to Consolidate
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Date	03/21/2011
Attachments	Consent Motion to Consolidate.pdf (5 pages)(19047 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,697,442,
For the mark EXCELSIOR HENDERSON,

In the matter of Registration No. 3,772,079,
For the mark X EXCELSIOR HENDERSON,

In the matter of U.S. Registration 3,915,734,
For the mark EXCELSIOR HENDERSON,

In the matter of Ser. No. 77/886,667,
For the mark EXCELSIOR HENDERSON,

Excelsior-Henderson Motorcycles,	:	Cancellation No.:	92052259*
	:		
Petitioner / Opposer,	:	Cancellation No.:	92052333
	:		
vs.	:	Cancellation No.:	92053604
	:		
John’s Repair, Inc.,	:	Opposition No.:	91198561
	:		
Registrant / Applicant.	:		

CONSENT MOTION AND STIPULATION TO CONSOLIDATE

COMES NOW the Petitioner / Opposer, Excelsior-Henderson Motorcycles (hereinafter “Petitioner / Opposer”), by counsel, The Swyers Law Firm, PLLC, and pursuant to § 511 of the TBMP, hereby files the instant Consent Motion and Stipulation to Consolidate the above-captioned matters. In support thereof, Petitioner / Opposer states as follows:

Statement of the Case

John’s Repair, Inc. (hereinafter “Registrant / Applicant”) is the registrant of U.S. Registration No. 3,697,442 for the mark EXCELSIOR HENDERSON, U.S. Registration 3,772,079 for the mark X EXCELSIOR HENDERSON, U.S. Registration 3,915,734 for the mark EXCELSIOR HENDERSON, and Applicant for U.S. Serial No. 77/886,667 for the mark EXCELSIOR HENDERSON.

Cancellation Nos. 92052259 and 92052333 were previously consolidated under Cancellation No. 92052333. Since that time, Petitioner / Opposer has instituted Cancellation No. 92053604 as well as Opposition No. 91198561.

The parties to the above-captioned matters now wish to consolidate the same into one global action under Cancellation No. 92052333.

Argument

When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. TBMP § 511 (*citing* Fed. R. Civ. P. 42(a)(*citations omitted*)). Cases may be consolidated despite variations in the marks or the goods upon which they are used so long as the questions of law or fact common to those cases are the same. *See Ritchie v. Simpson*, 41 USPQ2d 1859 (TTAB 1996), *rev'd on other grounds*, 170 F.3d 1092, 50 USPQ2d (Fed. Cir. 1999). Moreover, cancellation and opposition proceedings may be consolidated into one matter. *See Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993).

In deciding upon a motion to consolidate, the Board should weigh the savings in time, effort, and expense, which may be gained from consolidation, against any prejudice or inconvenience that may be caused thereby. TBMP § 511 (*citing World Hockey Ass'n v. Tudor Metal Products Corp.*, 185 USPQ 246 (TTAB 1975)(consolidation ordered where issues were substantially the same and consolidation would be advantageous to both parties)).

Although consolidation is discretionary by the Board, it may be ordered upon a motion granted by the Board or upon a stipulation of the parties approved by the Board. TBMP § 511.

When matters are consolidated, the oldest of the consolidated cases will be treated as the “parent” case and the Board should reset the trial and discovery dates for the consolidated

proceeding by adopting the trial dates set in the most recently instituted of the cases being consolidated. TBMP § 511.

Applying the above to the matters at issue, in each of the four proceedings sought to be consolidated the Petitioner / Opposer has alleged and intends to rely upon the identical theories of prosecution in each proceeding. As such, it is Petitioner / Opposer's contention that Registrant / Applicant's marks not be permitted to register and/or be maintained on the Principal Register as registered due to the geographical significance of the terms.

Correspondingly, it is anticipated that Registrant / Applicant will defend the instant proceedings on similar if not identical grounds.

Accordingly, all proceedings will involve the same or substantially identical questions of law of as well as a significant overlap of the facts supporting the application of the law to the matters before the Board.

In evaluating the instant motion, Petitioner / Opposer asserts that in the interests of judicial economy the requested consolidation will serve to significantly decrease both the Board's time and effort in presiding over these matters as well as the parties' respective efforts and expense in prosecuting and/or defending the same. *See World Hockey Ass'n*, 185 USPQ 246. Moreover, the parties have consented to and have stipulated to the instant consolidation.

WHEREFORE for good cause shown it is hereby requested that the instant proceedings be consolidated under the oldest matter, Cancellation No. 92052333, and that trial dates be rescheduled for the new consolidated matter consistent with the most recently instituted matter consolidated Cancellation No. 92053604.

Respectfully submitted this 21st day of March 2011.

The Swyers Law Firm, PLLC

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	:		
Registrant / Applicant.	:		

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing pleading was sent,
via agreement, via email this 21st day of March, 2011 to the following:

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/Matthew H. Swyers/
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