

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

CME

Mailed: August 27, 2013

Cancellation No. 92056642

Jeff Miller

v.

Daphne Hereford

Cancellation No. 92057110

Jeff Miller, Max Kleven and
Rin, Inc.

v.

Daphne Hereford

By the Trademark Trial and Appeal Board:

Cancellation No. 92056642 now comes up on petitioner's motion to amend, filed April 19, 2013, respondent's motion to dismiss, filed May 10, 2013, and petitioner's motion to suspend, filed June 18, 2013.

Consolidation

Before addressing the pending motions, it has come to the Board's attention that petitioner and respondent in Cancellation No. 92056642 are also involved in Cancellation No. 92057110. When cases involving common questions of law or fact are pending before the Board, the Board may order

Cancellation Nos. 92056642 and 92057110

the consolidation of the cases. 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 Fed. R. Civ. P. 42(a); see also *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991) (Board's initiative); TBMP § 511 (3d ed. rev.2 2013). Cancellation Nos. 92056642 and 92057110 involve the same or related marks covering identical and related goods and services, and respondent and one petitioner in the proceedings are the same. The parties in both cancellation actions are also represented by the same counsel. In view of these circumstances, the Board finds that consolidation of the above-referenced proceedings is appropriate. Consolidation will avoid duplication of effort concerning the factual issues and will thereby avoid unnecessary costs and delays.

Accordingly, the above-referenced cancellation proceedings are hereby consolidated and may be presented on the same record and briefs. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1619 n.1 (TTAB 1989), and *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423, 1424 n.1 (TTAB 1993). The Board file will be maintained in **Cancellation No.**

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92056642 as the "parent" case. The parties should no longer file separate papers in connection with each proceeding. Instead, only a single copy of each paper should be filed by the parties in the parent case, and each paper should bear the case caption as set forth above.

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. See *Dating DNA LLC v. Imagini Holdings Ltd.*, 94 USPQ2d 1889, 1893 (TTAB 2010).

Motion to Suspend

Petitioner's motion to suspend these consolidated proceedings in favor of a pending federal court action involving the parties (*Max Kleven, et al. v. Daphne Hereford, et al.*, CV13-02783-ABC (AGRx) pending in the U.S. District Court for the Central District of California) (the "Federal Case") is hereby **GRANTED** as well taken and conceded. See Trademark Rule 2.127(a). Accordingly, proceedings herein are suspended pending final disposition of the Federal Case, and in view of this suspension, all pending motions in the consolidated cases are denied without prejudice.

Within **TWENTY DAYS** after the final determination of the Federal Case, the parties shall so notify the Board in writing, including a copy of the court's final order.

If a party believes its motion pending at the time of suspension and denied by this order was not resolved or made moot by the Federal Case, the party may renew the motion by citing its title, date of filing, and docket entry in the Board's electronic proceeding file.¹ Any motion renewed must be accompanied by a signed statement that the motion has been reviewed in its entirety and concerns matters still disputed between the parties.

If the renewed motion was contested at the time of suspension and the non-moving party believes that its original response requires supplementation in view of events since suspension, the non-moving party has FIFTEEN DAYS from the date of service of the renewal of the motion to file a supplemental response.

During the suspension period, the parties shall notify the Board of any address changes for the parties or their attorneys.

¹ Because the cases have been consolidated, any renewed motion(s) should be filed in the parent case only.

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