

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

Mailed: February 15, 2014

Opposition No. 91212240 (parent)  
Cancellation No. 92057779  
Cancellation No. 92057789

Sony Corporation

v.

J.W. Pepper & Son, Inc.

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

Now before the Board is Sony Corporation's ("Sony") motion (filed January 6, 2014, in each proceeding) to consolidate Opposition No. 91212240, Cancellation No. 92057779, and Cancellation No. 92057789. J.W. Pepper & Son, Inc. ("Pepper") has filed a brief in opposition thereto.

Procedural Issues

Before determining the motion to consolidate, the Board addresses a few procedural issues.

1. Late answer in Cancellation No. 92057779

Answer was due in Cancellation No. 92057779 on October 8, 2013; however, Pepper filed its answer one day late on October 9th. In view of the fact that answers were (then)

due on October 9th in the two other proceedings involving the same parties (i.e., Opposition No. 91212240 and Cancellation No. 92057789), the Board finds good cause to set aside Pepper's technical default in Cancellation No. 92057779 and to accept the late answer therein.

2. Amended petition in Cancellation No. 92057789

Sony's amended petition to cancel (filed October 16, 2013) is accepted as a matter of course. Fed. R. Civ. P. 15(a)(1)(B); Trademark Rule 2.115.

3. Late answer to amended petition in Cancellation No. 92057789

Pepper's answer (filed November 7, 2013) to the amended petition is noted and accepted. Although answer to the amended petition was due November 4, 2013 (see Fed. R. Civ. P. 15(a)(3) and Trademark Rules 2.115 and 2.119(c)), the Board finds good cause to set aside Pepper's technical default in Cancellation No. 92057789 and to accept the late answer to the amended petition therein.

4. Time for reply

The Board exercises its discretion to determine the motion to consolidate prior to the expiration of time in which Sony might otherwise file a reply brief in support thereof.

Motion to Consolidate

Federal R. Civ. P. 42(a), made applicable to these proceedings 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 join for hearing or trial any or all of the matters at issue in the actions; may consolidate the actions; and may issue any other orders to avoid unnecessary costs or delay. See TBMP § 511 (3d ed. rev. 2 2013).

The Board has reviewed the records in Opposition No. 91212240, Cancellation No. 92057779, and Cancellation No. 92057789, and concludes that these cases involve identical parties, similar marks, and common questions of law and fact. It would therefore be appropriate to consolidate these proceedings pursuant to Fed. R. Civ. P. 42(a).

Pepper's arguments to the contrary are unavailing. While there are differences between the three subject marks, they all share the term SONIFLY and one mark (the subject of Cancellation No. 92057779) is registered in standard character form without any design element and without claim to any particular font style or size, and each of Sony's pleaded marks contains the term SONY. The pleaded mark and subject marks at issue in the case (i.e., *Envirotech Corp. v. Solaron Corp.*, 211 USPQ 724 (TTAB 1981)) cited by Pepper were comprised solely of design elements.

Accordingly, Sony's motion to consolidate is **granted**. The above-noted proceedings are hereby consolidated and may be presented on the same record and briefs. See *Dating DNA*

*LLC v. Imagini Holdings Ltd.*, 94 USPQ2d 1889, 1893 (TTAB 2010). Despite being consolidated, each proceeding will retain its separate character. The decision on the consolidated cases will take into account any differences in the issues raised by the respective pleadings and by the subject marks. The Board file will be maintained in Opposition No. 91212240 as the "parent" case. The parties should no longer file separate papers in connection with each proceeding. 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.

Schedule

Dates for the consolidated proceedings reset on the following schedule.

Expert Disclosures Due	<b>5/7/2014</b>
Discovery Closes	<b>6/6/2014</b>
Sony's Pretrial Disclosures	<b>7/21/2014</b>
Sony's 30-day Trial Period Ends	<b>9/4/2014</b>
Pepper's Pretrial Disclosures	<b>9/19/2014</b>
Pepper's 30-day Trial Period Ends	<b>11/3/2014</b>
Sony's Rebuttal Disclosures	<b>11/18/2014</b>
Sony's 15-day Rebuttal Period Ends	<b>12/18/2014</b>

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 the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark

Opposition No. 91212240; Cancellation Nos. 92057779 & 92057789

Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.