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

Proceeding	92059099
Party	Plaintiff Carnevor, Inc.
Correspondence Address	STEPHEN L ANDERSON ANDERSON & ASSOCIATES 27280 VIA INDUSTRIA, UNIT B TEMECULA, CA 92590 UNITED STATES attorneys@brandxperts.com
Submission	Motion to Consolidate
Filer's Name	Stephen L. Anderson
Filer's e-mail	attorneys@brandxperts.com
Signature	/StephenLAnderson/
Date	08/22/2014
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No.: 4,326,591
Mark: DOG HAUS

CARNEVOR INC.)	Cancellation Nos.: 92059099
)	92059167
Petitioner,)	
)	MOTION TO CONSOLIDATE
vs.)	PENDING INTER PARTES
)	PROCEEDINGS
DOG HAUS, LLC)	
Respondent.)	
_____)	

Petitioner, Carnevor, Inc., (“Petitioner”) hereby moves to consolidate the above-captioned proceeding with pending Cancellation No. 92059167, for all purposes, including trial and pre-trial proceedings.

This Motion is made on the grounds that the two respective actions involve common questions of law and fact. Certainly, consolidation of these two proceedings will result in significant savings in time, effort and expense for each of the parties and the TTAB. Moreover, consolidation will reduce the likelihood of duplicative work and minimize the chance of the parties facing inconsistent rulings rendered in each of these closely related inter partes matters.

BRIEF IN SUPPORT OF MOTION

A. Factual Background

On April 25, 2014, Petitioner filed a cancellation action (No. 92059909), as against Registration No.: 4,326,591 for the word mark “DOG HAUS” issued on April 30, 2013, in connection with “cafe and restaurant services; catering services; restaurant take out services” in International Class 43. Such mark was registered in the name of Respondent, Dog Haus LLC.

On May 02, 2014, Petitioner filed another cancellation action (Proceeding No. 92059167) against the mark shown in United States Registration No. 4,202,507 for the mark “DOG HAUS”



and design: issued on the Principal Register on September 04, 2012, to Dog Haus, LLC, in connection with “Restaurant and cafe services; Restaurant and catering services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Take-out restaurant services” in International Class 43

Because the Respondent’s two marks “DOG HAUS” and Dog Haus and Design at issue in the respective proceedings are highly similar and contain the identical wording; because the parties to both Cancellation proceedings are the same parties; and because the respective proceedings involve common issues of fact and law, to promote administrative efficiency and to save time and expense for the parties, Consolidation should be ordered by the Board.

B. Legal Standard

Fed. R. Civ. P. 42(a), as made applicable to Board proceedings by 37 CFR Section 2.116(a) (Trademark Rule 2.116(a)), provides that when actions involving common questions of law and fact are pending before the Board, the Board may order all of the actions consolidated, and it may make any orders concerning pending proceedings to avoid unnecessary costs or delay.

In this case, there is more than sufficient commonality of factual and legal issues in each of the proceedings such that consolidation is appropriate. The cancellation proceedings involve the same parties, involve marks that are identical, if not highly similar to one another, share the same connotation, and notably include the designation DOG HAUS. Further, each of the pleadings filed primarily involve or raise many of the same primary issues, claims and/or defenses.

TBMP Section 511 provides for consolidation of such actions when as here, the actions involve a common questions of fact and law, and where handled separately, each of the matters will needlessly cause additional costs and delay. Certainly, there will be a significant, if not overwhelming savings of time, effort and expense gained by the parties and the Board from the proposed consolidation of the two pending matters which will well outweigh any alleged prejudice or inconvenience that might be allegedly caused by such proposed consolidation.

(See *In re: Softspikes, Inc.* 2009 WL 722034 (T.T.A.B. March 3, 2009) (unpublished) (TTAB consolidated proceedings where applications involved the same marks and related issues; *In re: ICE Futures U.S., Inc.*, 85 U.S.P.Q. 2d 1664 (TTAB 2008) (TTAB consolidated proceedings in the appeals of three applications because they involved the same applicant and common issues of fact and law); *In re IP Carrier Consulting Group*, 84 US.P.Q.2d 1028 (TTAB 2007)(TTAB consolidated appeals because applications were filed by the same applicant, reviewed by the same examining attorney, and involved common issues of fact and law); *Black & Decker Corp. v. Emerson Elect. Co.*, 84 U.S.P.Q. 2d 1482 (TTAB 2007) (TTAB granted the parties consented motions to consolidate the proceedings on two oppositions involving the same parties, similar marks, and identical goods); *M.C.I. Foods Inc. v. Bunte*, 86 USPQ2d 1044, 1046 (TTAB 2008) (proceeding involved identical parties, identical registrations and related issues); *S. Industries Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293, 1297 (TTAB 1997) (both proceedings involved the same mark and virtually identical pleadings); *Ritchie v. Simpson*, 41 USPQ2d 1859 (TTAB

1996), rev'd on other grounds, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999) (cases consolidated despite variations in marks and goods); *Hilson Research Inc. v. Society for Human 4 Resource Management*, 27 USPQ2d 1423 (TTAB 1993) (opposition and cancellation consolidated); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382, 1384 n.3 (TTAB 1991). See also *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989); *Bigfoot 4x4 Inc. v. Bear Foot Inc.*, 5 USPQ2d 1444 (TTAB 1987); *Federated Department Stores, Inc. v. Gold Circle Insurance Co.*, 226 USPQ 262 (TTAB 1985)).

When deciding whether to consolidate proceedings, the TTAB will weigh the savings in time, effort and expense for each of the parties and the TTAB against any prejudice or inconvenience that consolidation may cause. TBMP §511; See also e.g., *Dating DNA LLC v. Imagini Holdings Ltd.*, 94 USPQ2d 1889, 1893 (TTAB 2010) (motion to consolidate granted); *Lever Bros. v. Shaklee Corp.*, 214 U.S.P.Q. 654 (TTAB 1982) (motion to consolidate an opposition proceeding with the cancellation pending between the parties was denied on the ground that it was untimely since all testimony periods in the opposition had expired whereas the cancellation was still in the pleading stage.)

Here, the respective pending cancellation cases are each very early in the proceedings, the parties to the respective actions are the same, and no obvious prejudice will result from consolidation. Most importantly, consolidation is appropriate inasmuch as the two proceedings both will focus on the merely descriptive nature of the “DOG HAUS” marks as applied to the goods of the parties herein, both matters involve the same parties, involve the same basic issues and each share common questions of law and fact. The Petitioner believes that these two proceedings may be presented on the same record without appreciable inconvenience or confusion, while to the

contrary, separate proceedings would only cause additional and unwarranted costs, administrative confusion and delays.

Thus, under FRCP Rule 42(a), this Motion to Consolidate these two pending matters is proper and should be granted. Accordingly, the Board should order these matters consolidated into the “parent” proceeding No. 92059099.

Respectfully submitted,

ANDERSON & ASSOCIATES

Dated: August 22, 2014

by: /StephenLAnderson/
Stephen L. Anderson
27280 Via Industria, Unit B
Temecula, CA 92590

Attorney for Petitioner, CARNEVOR, INC.

Certificate of Service

I hereby certify that on the date set forth below, a copy of the foregoing **MOTION TO CONSOLIDATE PENDING INTER PARTES PROCEEDINGS** is being/was sent via first-class mail, postage prepaid, to the Respondent at the address of its attorney of record namely:

Walter M. Crandall
ROBERTSON & OLSEN, LLP,
9696 Culver Boulevard, Suite 302
Culver City, California 90232

Dated: August 22, 2014

by: /StephenLAnderson/
Stephen L. Anderson