

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: October 9, 2015

**Cancellation No. 92062245
(PARENT CASE)**

Genesis NYC Enterprises, Inc.
v.
Jai Group, S.A.

Cancellation No. 92062263

Jai Group, S.A.
v.
Genesis NYC Enterprises, Inc.

Jennifer Krisp, Interlocutory Attorney:

The Board notes the motion to consolidate proceedings which Jai Group, S.A. (“Jai”) filed on October 2, 2015 in each of the above-captioned proceedings, and notes the brief in opposition thereto filed by Genesis NYC Enterprises, Inc. (“Genesis”) on October 8, 2015 in Cancellation No. 92062245. Accordingly, these proceedings are before the Board for consideration of the motion to consolidate.¹

¹ The Board, in its discretion, and to avoid delay to these proceedings, considers the merits of the motion prior to the time for filing a reply brief thereon. TBMP § 502.02(b); *Cf.* TBMP § 502.06(a); *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 USPQ2d 1719, 1720 n.3 (TTAB 1989).

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. *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991).

When cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases. Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, *supra*; *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense which may be gained from consolidation, against any prejudice or inconvenience which may be caused thereby.

The Board notes various arguments advanced by Genesis in opposition to consolidation, including its arguments that the motion is premature because the respective defendants have not filed answers. The Board may exercise its discretion to consolidate proceedings prior to joinder of issue, in order to maintain order in the proceedings on its docket. TBMP § 511 (2015). Continuing to Genesis' argument that no appearance of counsel or domestic representative has been entered in Cancellation No. 92062245 on behalf of Jai, the Board notes that counsel for Jai entered his appearance in that proceeding by way of filing the motion to consolidate; furthermore, the appearance of a domestic representative is permissive and not mandatory. Trademark Act § 2.24(a)(1) [“the applicant may designate a domestic representative (*i.e.*, a person residing in the United States on whom notices or process in

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proceedings affecting the mark may be served;” emphasis added]; TBMP § 114.07 (2015). Similarly disposing of Genesis’ argument that no appearance of attorney has been entered in Cancellation No. 92062263 on behalf of Genesis, the Board anticipates, based on the record thus far, that counsel will enter appearance therein consistent with the appearance in the “parent case,” such that Genesis will be represented in these consolidated proceedings by the same counsel.²

It is noted that the parties to these proceedings are identical. Moreover, the issues are similar or related, and the parties plead and rely upon their same respective properties in the two proceedings. Accordingly, the motion to consolidate is granted. Cancellation No. 92062245 and Cancellation No. 92062263 are hereby consolidated and may be presented on the same record and briefs. *Hilson Research Inc. v. Society for Human Resource Management, supra*; and *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

The Board file will be maintained in **Cancellation No. 92062245** as the “parent case.” Inasmuch as these proceedings are being consolidated prior to joinder of the issues in each proceeding, Jai must file its answer in Cancellation No. 92062245, and Genesis must file its answer in Cancellation No. 92062263, before commencing the practice of filing a single copy of all motions, briefs and papers in the “parent

² In any event, if a party is represented by different counsel, the Board may request that the party appoint lead counsel to represent it in the proceedings, who would be responsible for, *inter alia*, distributing copies of Board correspondence to the other attorney or representative. TBMP §§ 117.02 and 401.01 (2015).

case.”³ After joinder, the parties shall file only a single copy of all motions, briefs and papers in the “parent case” only, and shall caption all filings as styled above, namely, by captioning both consolidated proceeding numbers, listing and identifying the “parent case” first.

Despite being consolidated, each proceeding retains its separate character and requires entry of a separate judgment. 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.

When consolidating *inter partes* proceedings, the Board resets dates for the consolidated proceeding, usually by adopting the dates as set in the most recently instituted of the cases being consolidated. Accordingly, inasmuch as an answer is due by October 28, 2015 in Cancellation No. 92062263, for these now consolidated proceedings the time to answer, as well as conferencing, discovery and trial dates, are reset as follows:⁴

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| Answers Due | October 28, 2015 |
| Deadline for Required Discovery Conference | November 27, 2015 |
| Discovery Opens | November 27, 2015 |

³ The parties should promptly inform the Board of any other Board proceedings or related cases within the meaning of Fed. R. Civ. P. 42, so that the Board can consider whether further consolidation is appropriate.

⁴ The Board notes, in Cancellation No. 92062263, the amended certificate of service filed by Jai on September 18, 2015, and the USPS mail returned undeliverable on October 1, 2015. Regarding the latter, the record reflects that the returned envelope was addresses correctly to the address of record for Registration No. 4358012; accordingly, Genesis should update or clarify its correspondence address for these proceedings as necessary, or submit a filing (*i.e.*, answer) indicating correspondence information for counsel for Genesis.

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| Initial Disclosures Due | December 27, 2015 |
| Expert Disclosures Due | April 25, 2016 |
| Discovery Closes | May 25, 2016 |
| Genesis Pretrial Disclosures (92062245) | July 9, 2016 |
| 30-day testimony period for Genesis testimony to close (92062245) | August 23, 2016 |
| Jai Pretrial Disclosures (92062245 and 92062263) | September 7, 2016 |
| 30-day testimony period for Jai to close (92062245 and 92062263) | October 22, 2016 |
| Genesis Rebuttal Disclosures (92062245) and disclosures (92062263) Due | November 6, 2016 |
| 30-day testimony period for Genesis (92062263) and 15-day rebuttal testimony (92062245) to close | December 21, 2016 |
| Jai Rebuttal Disclosures Due (92062263) | January 5, 2017 |
| 15-day rebuttal period for Jai to close (92062263) | February 4, 2017 |
| BRIEFS SHALL BE DUE AS FOLLOWS: | |
| Brief for Genesis due (92062245) | April 5, 2017 |
| Brief for Jai due (92062245, 92062263) | May 5, 2017 |
| Brief for Genesis (92062263) and reply brief, if any, for Genesis (92062245) due | June 4, 2017 |
| Reply brief, if any, for Jai (92062263) due | June 19, 2017 |

In the event that the parties file any motion to suspend or extend dates, the motion must set forth a proposed schedule in the same manner as the schedule that is set forth herein. Trademark Rule 2.121(d); TBMP § 501.03 (2015).

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