

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Lykos

Mailed: April 3, 2003

Opposition Nos. 125,238
125,283
150,263
152,763

Joe Boxer Company, LLC

v.

Franklin Loufrani

Opposition Nos. 155,271
155,282

Franklin Loufrani

v.

Joe Boxer Company, LLC

(as consolidated)

Angela Lykos, Interlocutory Attorney

Counterclaim

On February 12, 2003, the Board ordered consolidation of Opposition Nos. 125,238, 125,283, 150,263 and 152,763, and allowed applicant time to file answers in Opposition Nos. 125,238, 150,263, and 152,763.

It has now come to the Board's attention that on February 4, 2003, applicant filed an amended answer in Opposition No. 125,283 and counterclaim to cancel opposer's

Opposition No. 125,238, 125,283, 150,263, 152,763, 155,271, and 155,282

pleaded Registration Nos. 2,041,783, 2,028,591, and 2,038,467, as well as other registrations owned by opposer, namely, Registration Nos. 2,065,095, 2,666,784, and 2,616,306. Applicant filed the proper fee. Inasmuch as applicant filed its amended answer within 20 days after service of its original answer, applicant's amended answer and counterclaim are accepted and noted for the record. See Fed. R. Civ. P. 15(a); see also TBMP § 507.02 and authorities cited therein.

Opposer and counterclaim defendant in Opposition Nos. 125,238, 125,283, 150,263 and 152,763, Joe Boxer Co., LLC, is allowed until thirty (30) days from the mailing date of this order to file an answer to the counterclaim in Opposition No. 125,283. See Trademark Rules 2.106(b)(2)(iii) and 2.121(b)(2).

Consolidation

On February 18, 2003, Franklin Loufrani, in the position of opposer in Opposition Nos. 155,271 and 155,282¹ filed a motion to consolidate the referenced proceedings with the consolidated proceedings herein.

By this order, Opposition Nos. 155,271 and 155,282 are consolidated with Opposition Nos. 125,238, 125,283, 150,263, 152,763. Opposition No. 125,238 is the parent case.

¹ Application Serial Nos. 78/119,305 and 78/119,372.

Opposition No. 125,238, 125,283, 150,263, 152,763, 155,271, and 155,282

Consequently, the parties' future submissions should be captioned in the above manner.

When cases involving common questions of law or facts are pending before the Board, the Board may order, upon its own initiative or upon motion, the consolidation of the cases. See Fed. R. Civ. P. 42(a) and TBMP § 511 and authorities cited therein.

A review of the pleadings in the above identified opposition proceedings indicates that the parties are the same, and the proceedings involved substantially identical questions of fact and law. These proceedings may be presented on the same record without appreciable inconvenience or confusion. Moreover, the consolidation would be equally advantageous to those parties in the avoidance of duplication of effort, loss of time, and the extra expense involved in conducting the proceedings individually.

The consolidated cases may be presented on the same record and briefs. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989) and *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993).

Applicant, Joe Boxer Company, LLC, has not yet filed an answer in Opposition Nos. 155,271 and 155,282. The Board prefers each case filed to have complete pleadings.

Opposition No. 125,238, 125,283, 150,263, 152,763, 155,271, and 155,282

Accordingly, applicant, Joe Boxer Co., LLC, is allowed until thirty (30) days from the mailing date of this order to file answers in Opposition Nos. 155,271 and 155,282. The answers should be filed as a submission only for each particular case.

Thereafter, the Board file will be maintained in Opposition No. 125,238 as the "parent" case. As a general rule, only a single copy of any paper or motion should be filed herein; but that copy should bear all four proceeding numbers in its caption. Exceptions to the general rule involve stipulated extensions of the discovery and trial dates, see Trademark Rule 2.121(d), and briefs on the case, see Trademark Rule 2.128.

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 filed.

The parties are further advised that they are to inform the Board if any subsequent oppositions or cancellations are instituted which involve the same parties and the same issues.

Discovery and Trial Dates Reset

In accordance with the Trademark Rules of Practice, discovery is open, and the close of discovery and testimony

Opposition No. 125,238, 125,283, 150,263, 152,763, 155,271, and 155,282

dates are set as indicated below. 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.

THE PERIOD FOR DISCOVERY TO CLOSE:

(use date from prior trial order or last extended date, **however, if there is less than 60 days remaining for discovery, or if discovery has closed, reset the discovery closing date by allowing 60 days from date of mailing.** If no dates have been previously set, use 180 days.)

30-day testimony period for Joe Boxer in position of plaintiff in Opposition Nos. 125,238, 125,283, 150,263, and 152,763 to close:

September 19, 2003

30-day testimony period for Mr. Loufrani in position of defendant in Opposition Nos. 125,238, 125,283, 150,263, and 152,763 and plaintiff in the counterclaim and Opposition Nos. 155,271 and 155,282 to close:

December 18, 2003

30-day rebuttal testimony period for Joe Boxer in position of defendant in the counterclaim and Opposition Nos. 155,271 and 155,282 and plaintiff in Opposition Nos. 125,238, 125,283, 150,263, and 152,763 to close:

February 16, 2004

15-day rebuttal testimony period for

Opposition No. 125,238, 125,283, 150,263, 152,763, 155,271, and 155,282

Mr. Loufrani in the position of
plaintiff in the counterclaim
Opposition Nos. 155,271 and 155,282
to close:

April 1, 2004

**Briefs shall be due as follows:
[See Trademark Rule 2.128(a)(2)].**

Brief for Joe Boxer in
position of plaintiff in Opposition
Nos. 125,238, 125,283, 150,263,
and 152,763 shall be due:

May 30, 2004

Brief for Mr. Loufrani
in position of defendant in
Opposition Nos. 125,238, 125,283,
150,263, and 152,763 and plaintiff in
the counterclaim and Opposition Nos.
155,271 and 155,282 shall be due:

June 29, 2004

Brief for Joe Boxer in
position of defendant
in the counterclaim and Opposition
Nos. 155,271 and 155,282 and
and reply brief, if any, as plaintiff
in Opposition Nos. 125,238,
125,283, 150,263, and 152,763 shall
be due:

July 29, 2004

Reply brief, if any, for
Mr. Loufrani in the position of
plaintiff in the counterclaim
Opposition Nos. 155,271 and 155,282
shall be due:

August 13, 2004

If the parties stipulate to any extension of these dates,
the papers should be filed in triplicate and should set forth
the dates in the format shown in this order. See Trademark
Rule 2.121(d).

An oral hearing will be set only upon request filed as
provided by Trademark Rule 2.129.

Opposition No. 125,238, 125,283, 150,263, 152,763, 155,271, and 155,282