UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Butler

Mail date: September 15, 2004

Opposition No. 91/154308
Opposition No. 91/154615

Red Bull GmbH

v.

Cappuccino Americana Corp.

In an order dated July 7, 2004, the Board granted applicant's motion to consolidate; consolidated the above-identified proceedings; and reset dates.

This case now comes up on opposer's motion for default judgment, filed July 13, 2004. Accompanying opposer's motion is a document dated the July 7, 2004 in which applicant expressly abandoned its application Serial No. 78/057941 only, for the mark RED STALLION (the subject application of Opposition No. 91/154308).[1]

In support of its motion, opposer argues that judgment should be entered against applicant because applicant has abandoned application Serial No. 78/057941 without opposer's written consent. Opposer also argues that, because the

[1] Such abandonment was not associated with either proceeding file. However, a copy accompanies opposer's motion for judgment in its favor.

proceedings are consolidated, applicant's express abandonment should be imputed to both oppositions in this consolidated proceeding.

In response, applicant acknowledges that it filed an abandonment of application Serial No. 78/057941. Applicant argues that its decision to abandon such application was made for business reasons, including that it has not yet used the mark. However, according to applicant, the subject mark of Opposition No. 91/154615 (WILD STALLION) is in use and applicant has not filed an abandonment thereof. In addition, applicant argues that it was unaware of the Board's consolidation order which issued on the same day applicant signed its abandonment of application Serial No. 78/057941, captioned only for Opposition No.91/154308.

Consolidation of cases is a judicial economy intended, in part, to avoid unnecessary cost and delay of cases involving common questions of law or fact. However, consolidated cases do not lose their separate identities, and each proceeding retains its separate character and requires entry of a separate judgment. *See* Fed. R. Civ. P. 42(a); and TBMP §511 (2nd ed. rev. 2004). Thus, applicant's abandonment of its application Serial No. 78/057941 for the mark RED STALLION cannot be inferred to be an abandonment of its application for the mark WILD STALLION (subject matter of Opposition No. 91/154615).

If, in an *inter partes* proceeding, the applicant files an abandonment without the written consent of every adverse party to

the proceeding, judgment shall be entered against the applicant. *See* Trademark Rule 2.135.

Accordingly, because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant in Opposition No. 91/154308 only, such opposition is sustained and registration to applicant of its application Serial No. 78/057941 only is refused.

The cases are no longer consolidated, and Opposition No. 91/154615 will proceed under the schedule set forth in the Board's July 7, 2004 order, repeated below:

THE PERIOD FOR DISCOVERY TO CLOSE:	November 15, 2004
30-day testimony period for party in position of plaintiff to close:	February 13, 2005
30-day testimony period for party in position of defendant to close:	April 14, 2005
15-day rebuttal testimony period to close:	May 29, 2005

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. Rule 2.l25.

Briefs shall be filed in accordance with Rule 2.l28(a) and (b). An oral hearing will be set only upon request filed as provided by Rule 2.l29.

By the Trademark Trial and Appeal Board