

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

Greenbaum

Mailed: January 28, 2004

Opposition No. 91157178

Opposition No. 91158299

INTERNATIONAL STAR  
REGISTRY OF ILLINOIS,  
LTD.

v.

TONYA S. VAUGHAN

Before Cissel, Quinn and Hairston, Administrative Trademark  
Judges.

By the Board.

Upon further review of the file in Opposition No.  
91158299, the Board has discovered all apparently missing  
documents referenced in the January 12, 2003 Board order.  
The Board has updated the proceeding file accordingly. In  
addition, the apparently missing certificate of service for  
applicant's response to the motion to consolidate has been  
located. Therefore, there is no need for the parties to  
resubmit those documents for our consideration in the  
instant order.<sup>1</sup>

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<sup>1</sup> In the event the parties have been submitting more than one  
motion or brief in a single envelope addressed to the Board, the  
parties are advised to submit all future motions/briefs in  
separate envelopes, thereby helping the Board to properly scan  
and enter each document as it arrives.

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Motion to Consolidate

Turning now to opposer's motion to consolidate, the Board has reviewed the files in both proceedings, and has determined that consolidation is appropriate.<sup>2</sup>

Fed. R. Civ. P. 42(a), as made applicable 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 order a joint hearing or trial of any or all of the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

It is adjudged that in Opposition Nos. 91157178 and 91158299, there is a sufficient commonality of factual issues in the proceedings that consolidation is appropriate. Consolidation will avoid duplication of effort concerning the factual issues and will thereby avoid unnecessary costs and delays.

Accordingly, Opposition No. 91157178 is hereby consolidated with Opposition No. 91158299, and both cases may be presented on the same record and briefs. *See Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618

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<sup>2</sup> The parties fully briefed the motion, and we have considered opposer's reply. See Trademark Rule 2.127(a).

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(TTAB 1989). From this date forward, **Opposition No. 91157178** is designated as the "parent" case in which all papers shall be filed. As a general rule, from this point on, only a single copy of any paper or motion should be filed herein, but that copy should bear both 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 file. The parties are instructed to promptly inform the Board of any other related cases within the meaning of Fed. R. Civ. P. 42.

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Motion for Summary Judgment

Turning next to applicant's virtually identical motions for summary judgment, we note that each of applicant's two page motions accompanies a twenty-one or twenty-two page brief in support thereof,<sup>3</sup> a thirty page "Statement of Undisputed Material Facts," including an index thereto, and a one page index of relied upon exhibits.

Trademark Rule 2.127(a), as amended, states in relevant part: "[t]he brief in support of the motion . . . shall not exceed 25 pages in length." As was stated in the Notice of Final Rulemaking in which the page limitation was adopted:

[I]t is believed that [twenty-five] . . . pages [is] sufficient for the main brief. . . of any motion that arises in a Board inter partes proceeding. Because of the limited nature of Board proceedings, briefing for motions in such proceedings should not be as extensive as that in proceedings in court.

Notice of Final Rulemaking, 63 Fed. Reg. 48094 (September 9, 1998).

In this case, applicant's briefs in support of the summary judgment motions far exceed the twenty-five page limit for briefs in support of motions before the Board. Although we note that opposer did not object to the excessive length of applicant's brief, the page limitation for briefs on motions is for the fair and proper

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<sup>3</sup> In Opposition No. 91157178, applicant's supporting brief contains twenty-one pages. In Opposition No. 91158299, applicant's supporting brief contains twenty-two pages.

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administration of all Board proceedings, and is intended to prevent the parties from filing unduly long briefs. The parties cannot waive this limitation by their action, inaction or consent. See *Saint-Gobain Corp. v. Minnesota Mining and Manufacturing Co.*, 66 USPQ2d 1220 (TTAB 2003); and *Ron Cauldwell Jewelry Inc. v. Clothestime Clothes Inc.*, 63 USPQ2d 2009 (TTAB 2002).

Accordingly, we find that applicant's briefs are procedurally improper and in violation of Trademark Rule 2.127(a). Consequently, we will not consider applicant's motions for summary judgment.<sup>4</sup>

In view thereof, opposer's motion for discovery pursuant to Fed. R. Civ. P. 56(f) is moot. Further, in view of the December 16, 2003 Board order suspending proceedings, opposer's motion to extend its time to respond to "Applicant's Motion to Hold Discovery in Abeyance Pending Decision on Applicant's Dispositive Summary Judgment Motion" also is moot.

Proceedings are RESUMED. The parties are allowed THIRTY DAYS from the mailing date of this order to serve responses to any outstanding discovery requests. Trial dates, including the close of discovery, are reset as follows:

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<sup>4</sup> Applicant may file a new motion for summary judgment that complies with Trademark Rule 2.127 if it so chooses.

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DISCOVERY PERIOD TO CLOSE:

**July 20, 2004**

Thirty-day testimony period for party in position of plaintiff to close: **October 18, 2004**

Thirty-day testimony period for party in position of defendant to close: **December 17, 2004**

Fifteen-day rebuttal testimony period to close:

**January 31, 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. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.