

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

BDB

Mailed: October 23, 2007

Opposition No. 91176559

Cancellation No. 92047323

Express Services, Inc. and
Express Franchise Services,
L.P.

v.

TALX Corporation

(as consolidated)

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First, the parties' stipulated motion filed September 13, 2007, to extend discovery and trial dates is granted. See Trademark Rule 2.127(a). Accordingly, the discovery and trial dates are reset in accordance with that motion.

This case now comes up for consideration of plaintiff's motion (filed September 12, 2007) to consolidate Opposition No. 91176559 with Cancellation No. 92047323. After carefully reviewing the parties' pleadings and arguments, the Board finds that consolidation of the cancellation proceeding with the opposition is appropriate.

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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 Trademark Trial and Appeal Board Manual of Procedure § 511 (TBMP) and authorities cited therein (2d ed. rev. 2004).

A review of the pleadings in the above identified proceedings indicates that the parties are the same, and the proceedings involve common questions of law and fact. For example, Express Franchise Services, L.P. and Express Services, Inc. filed Opposition No. 91176559 and Cancellation No. 92047323 against a trademark application and three trademark registrations all owned by Talx Corporation. Additionally, the marks of Talx Corporation that are the subject of the opposition and cancellation proceedings discussed herein are all similar. Likewise, the grounds asserted for opposition as well as cancellation are both likelihood of confusion and dilution.

As a result, these proceedings may be presented on the same record and briefs without appreciable inconvenience or confusion. 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). Moreover, the consolidation would be equally advantageous to those parties in the avoidance of

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duplication of effort, loss of time, and the extra expense involved in conducting the proceedings individually.

In view thereof, plaintiff's motion to consolidate is granted. Accordingly, Opposition No. 91176559 and Cancellation No. 92047323 are hereby consolidated. Consequently, the parties' future submissions should be captioned in the above manner.

The Board file will be maintained in Opposition No. 91176559 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 the two 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 in any subsequent oppositions or cancellations are instituted which involve the same parties in the same issues.

Finally, opposer's recent motion for entry of a protective order, just filed on October 9, 2007, will be decided in due course.¹

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>

http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>

¹ Applicant's time to respond to opposer's motion has not expired.