

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

Mailed: September 17, 2007

Opposition No. 91177314

Opposition No. 91177756

Sony BMG Music Entertainment

v.

Jerry Clum

Cindy B. Greenbaum, Managing Interlocutory Attorney:

PROCEEDINGS CONSOLIDATED

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. 91177314 and 91177756, 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 Nos. 91177314 and 91177756 are hereby consolidated and may be presented on the same record and briefs. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). From this date forward, **Opposition No. 91177314** will be designated the "parent" case in which all papers shall be filed. However, every paper must henceforth reference all proceeding numbers as shown in the caption of this order. The only exception to this filing rule is that applicant must file a separate answer in each proceeding, which answer only references the opposition in which it is filed.

The parties are instructed to promptly inform the Board of any other related cases within the meaning of Fed. R. Civ. P. 42.

NOTICES OF DEFAULT SET ASIDE/EXTENSION OF TIME GRANTED

On August 20, 2007 in Opposition No. 91177314 and August 24, 2007 in Opposition No. 91177756, applicant was ordered to show cause why judgment should not be entered against him in each opposition in accordance with Fed. R. Civ. P. 55(b).

Applicant's response clearly shows that its failure to file a timely answer in this opposition proceeding was neither willful nor unduly prejudicial, but due to the need for additional time to retain a new attorney in light of the

death of applicant's former attorney.¹ The Board is persuaded that the foregoing reason constitutes good cause to set aside applicant's default. See *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

Accordingly, applicant's motion to set aside his default and for an extension of time to retain a new attorney is **granted**. Applicant is allowed until THIRTY DAYS from the mailing date hereof to appoint counsel or to file a paper stating that applicant intends to represent himself.

DATES RESET

Proceedings are resumed. Applicant is allowed until SIXTY DAYS from the mailing date of this order to file an answer or other responsive pleading to the notice of opposition. Trial dates, including the close of discovery, are reset as follows:

¹ The Board notes that applicant's response does not indicate proof of service of a copy thereof on counsel for opposer, as Trademark Rule 2.119 requires. If opposer has not received a service copy of applicant's filing, opposer may view and print the response via the following electronic links:
<http://ttabvueint.uspto.gov/ttabvue/v?pno=91177314&pty=OPP&eno=6>
and

<http://ttabvueint.uspto.gov/ttabvue/v?pno=91177756&pty=OPP&eno=6>
The Board expects applicant to strictly comply with Trademark Rule 2.119 in all future filings with the Board. Applicant is hereby warned that the Board may not consider future filings from applicant if they do not comply with the service requirements of Trademark Rule 2.119. Additionally, applicant is required to identify the parties to this matter and the opposition number in all future filings with the Board. Applicant should refer to the heading on page one of this order as a model for all of his future filings.

DISCOVERY PERIOD TO CLOSE: **February 15, 2008**

Thirty-day testimony period for party in position of plaintiff to close: **May 15, 2008**

Thirty-day testimony period for party in position of defendant to close: **July 14, 2008**

Fifteen-day rebuttal testimony period to close: **August 28, 2008**

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.

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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>