

ESTTA Tracking number: **ESTTA236209**

Filing date: **09/11/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91183010
Party	Defendant Rock & Republic Enterprises, Inc.
Correspondence Address	Jessica J. Slusser Manatt, Phelps & Phillips 11355 W. Olympic Blvd., 10th Flor Los Angeles, CA 90064 UNITED STATES
Submission	Motion to Consolidate
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Date	09/11/2008
Attachments	Stipulated Motion to Consolidate.pdf (6 pages)(74950 bytes)

2. On June 22, 2006, Applicant filed an intent to use application to register ROCK THE CURE for use with providing a website featuring information regarding charitable fundraising in Class 36 (the "Class 36 Application").

3. Also on June 22, 2006, Applicant filed an intent to use application to register ROCK THE CURE for use with retail booths at festivals featuring clothing; concession stands at festivals featuring food and beverage in Class 35; charitable fundraising services, namely, raising money for curing diseases and better health care, conducted at festivals in Class 36; and entertainment services in the nature of live musical performances, and ongoing television programs in the fields of live musical performances, charitable fundraising, and festivals; entertainment services in the nature of providing a website featuring information regarding live musical performances and festivals; organizing community festivals featuring a variety of activities, namely, booths or exhibitions for displaying clothing in Class 41 (the "Multiple Class Application").

4. The Class 25 Application was published for opposition on August 21, 2007, and Opposer requested and was granted three extensions of time to oppose the Class 25 Application.

5. On February 19, 2008, Opposer filed a Notice of Opposition to the Class 25 Application. The Board assigned the proceeding Opposition No. 91-182590 (the "Class 25 Opposition").

6. Applicant requested and was granted five extensions of time to respond to the Notice of Opposition. On September 10, 2008, the Board issued the latest scheduling order for the Class 25 Opposition.

7. Applicant filed an Answer to the Class 25 Opposition on August 13, 2008.

8. The Class 36 Application was published for opposition on September 18, 2007. Opposer requested and was granted two extensions of time to oppose the Class 36 Application.

9. On March 17, 2008, Opposer filed a Notice of Opposition to the Class 36 Application. The Board assigned the proceeding Opposition No. 91-183010 (the "Class 36 Opposition").

10. Applicant requested and was granted four extensions of time to respond to the Notice of Opposition. On July 14, 2008, the Board issued the latest scheduling order for the Class 36 Opposition.

11. Applicant filed an Answer to the Class 36 Opposition on August 13, 2008.

12. The Multiple Class Application was published for opposition on November 6, 2007. Opposer requested and was granted two extensions of time to oppose the Multiple Class Application.

13. On May 5, 2008, Opposer filed a Notice of Opposition to the Multiple Class Application. The Board assigned the proceeding Opposition No. 91-183912 (the "Multiple Class Opposition").

14. Applicant requested and was granted two extensions of time to respond to the Notice of Opposition. On July 14, 2008, the Board issued the latest scheduling order for the Multiple Class Opposition.

15. Applicant filed an Answer to the Multiple Class Opposition on August 13, 2008.

16. In a telephone conversation held on September 11, 2008, counsel for the parties agreed to seek consolidation of the Class 25 Opposition, the Class 36 Opposition, and the Multiple Class Opposition (collectively, the "Proceedings"). The parties further agreed that the Proceedings should be consolidated to follow the schedule set for the

Class 25 Opposition in the Board's September 10, 2008 scheduling order, with clarification of certain dates¹.

17. With the exception of the different good listed in each Application, the grounds alleged in the Notices of Opposition instituting the Proceedings are substantially identical, as each alleges the same conduct on the part of Applicant and the same trademark rights alleged by Opposer. In response, Applicant filed substantially identical Answers to the Notices of Opposition.

18. 37 C.F.R. § 2.116(a) provides that procedure and practice in inter partes proceedings shall be governed by the Federal Rules of Civil Procedure wherever applicable and appropriate, unless the Rules of Practice in Trademark Cases ("Trademark Rules") provide otherwise. The Trademark Rules do not establish a standard for determining the circumstances under which more than one pending inter partes proceeding may be consolidated, and, thus, Federal Rule of Civil Procedure 42(a) applies.

19. Federal Rule of Civil Procedure 42(a) provides that when actions involving a common question of law or fact are pending before a court, the court may order all the actions consolidated.

20. In light of the substantially identical grounds for opposition alleged by Opposer in the Proceedings and the fact that Proceedings involve identical parties, common questions of law or fact permeate the Proceedings.

21. Consolidation of the above-captioned Proceedings will promote efficiency, conserve administrative resources, reduce the time of resolving the actions, and reduce the expense of trying the actions separately.

¹ The Board's September 10, 2008 scheduling order appears to contain typos on the years (e.g., discovery is set to open January 30, 2000). Therefore, the parties propose a schedule for the consolidated Proceedings set forth below.

WHEREFORE, Applicant respectfully requests, with Opposer's consent, that the above-captioned actions be ordered consolidated, and that the scheduling order for the Class 25 Opposition be controlling for these consolidated proceedings with the following changes:

Deadline for discovery conference	10/3/08
Discovery opens	10/3/08
Initial disclosures due	11/2/08
Expert disclosures due	3/2/09
Discovery closes	4/3/09
Plaintiff's pretrial disclosures	5/18/09
Plaintiff's trial period ends	7/2/09
Defendant's pretrial disclosures	7/17/09
Defendant's trial period ends	8/31/09
Plaintiff's rebuttal disclosures	9/15/09
Plaintiff's rebuttal period ends	10/15/09

Respectfully submitted,
MANATT, PHELPS & PHILLIPS, LLP

Dated: September 11, 2008

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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically through ESTTA pursuant to 37 C.F.R. §2.195(a), on this 11th day of September, 2008.

/s/Shellie Sager
Shellie Sager

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Karen A. Brennan
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on this 11th day of September, 2008.

/s/Shellie Sager
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