

ESTTA Tracking number: **ESTTA227870**

Filing date: **08/01/2008**

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

Proceeding	91184231
Party	Defendant ADM Kao LLC
Correspondence Address	SUSAN UPTON DOUGLASS FROSS ZELNICK LEHRMAN& ZISSU, P.C. 866 UNITED NATIONS PLZ NEW YORK, NY 10017-1822 UNITED STATES sdouglass@fzlz.com, ddonahue@fzlz.com, bnewman@fzlz.com
Submission	Motion to Consolidate
Filer's Name	Betsy Judelson Newman
Filer's e-mail	bnewman@fzlz.com, ddonahue@fzlz.com
Signature	/Betsy Judelson Newman/
Date	08/01/2008
Attachments	Motion to Consolidate (F0327043).PDF ( 3 pages )(63477 bytes )

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

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ENIVA CORPORATION, :  
 :  
 :  
 : Petitioner/Opposer : Opposition No. 91184231  
 : : Consolidated Action: 91180918  
 : : (parent of previously consolidated actions)  
 :  
 - against - :  
 :  
 :  
 : KAO HEALTH AND NUTRITION LLC,<sup>1</sup> :  
 :  
 :  
 : Registrant/Applicant. :  
-----X

**MOTION ON CONSENT TO CONSOLIDATE  
OPPOSITION/CANCELLATION PROCEEDINGS**

Pursuant to Fed. R. Civ. P. 42(a) and T.B.M.P. Section 511, Registrant/Applicant Kao Health and Nutrition LLC (“Kao”) hereby requests that Opposition No. 91184231 be consolidated with the actions already consolidated under Opposition No. 91180918. The matters previously consolidated under this action include Opposition Nos. 91180918 and 91180929 and Cancellation Nos. 92048706 and 92048546. Kao contends that it would be more efficient to have these cancellations and oppositions consolidated, as the parties are the same, the marks at issue in the respective cancellations and oppositions are related and the proceedings shall therefore involve common issues of law and fact. It is believed that consolidation of the cases will save considerable time, effort and expense since a substantial amount of the discovery, evidence and documents will overlap.

Kao further requests that the Cancellations and Oppositions be governed by the discovery and trial schedule already set forth by the Board in connection with Opposition No. 91184231, as

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<sup>1</sup> On August 1, 2008 Kao Health and Nutrition LLC filed a motion to change the caption of the proceedings to reflect Registrant/ Applicant’s change of name from ADM Kao LLC to Kao Health and Nutrition LLC.  
{F0311639.1 }

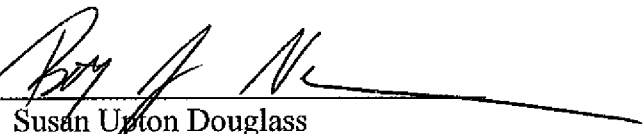
may be ordered by the Board. That schedule is currently set as follows for all remaining dates:

Deadline for Discovery Conference	July 30, 2008
Discovery Opens	July 30, 2008
Initial Disclosures Due	August 29, 2008
Expert disclosures due:	December 27, 2008
Discovery closes:	January 26, 2009
Plaintiff's pretrial disclosures:	March 12, 2009
Plaintiff's 30-day trial period ends:	April 26, 2009
Defendant's pretrial disclosures:	May 11, 2009
Defendant's 30-day trial period ends:	June 25, 2009
Plaintiff's rebuttal disclosures:	July 10, 2009
Plaintiff's 15-day rebuttal period ends:	August 9, 2009

Counsel for Petitioner/Opposer, Eniva Corporation, Kathryn K. Smith, Esq., Sherrill Law Offices, PLLC, consented to this motion by email on July 28, 2008.

Dated: New York, New York  
August 1, 2008

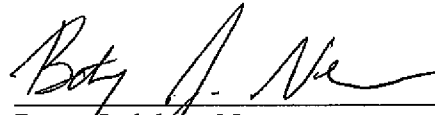
FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By:   
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*Attorneys for Registrant/Applicant*

**CERTIFICATE OF MAILING**

This is to certify that I caused a true and correct copy of the foregoing this MOTION ON CONSENT TO CONSOLIDATE CANCELLATION/OPPOSITION PROCEEDINGS to be served via First Class Mail in an envelope addressed to counsel for Eniva Corporation, Kathryn K. Smith, Esq., Sherrill Law Offices, PLLC, 4756 Banning Ave., Suite 212, White Bear Lake, MN 55110, this 1st day of August, 2008.

  
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Betsy Judelson Newman