

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

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Mailed: December 30, 2008

Opposition No. 91181364

MILLER BREWING COMPANY AND
MILLERCOORS LLC

v.

ANHEUSER-BUSCH, INCORPORATED

Opposition No. 91186821

MILLERCOORS LLC

v.

ANHEUSER-BUSCH, INCORPORATED

Elizabeth A. Dunn, Attorney:

On review of the pleadings, the Board notes that in each proceeding opposers bring the same claim that the opposed marks include a single color of beverage bottle, and that such use of the color is functional and does not function as a trademark.

Because the parties are the same or related, and the two proceedings involve common issues of law and fact, the Board believes that the interest of judicial economy will be

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served by consolidation of Opposition Nos. 91181364 and 91186821. See Fed. R. Civ. P. 42(a) and TBMP §511.

Accordingly, Opposition Nos. 91181364 and 91186821 are consolidated, and, with the exception of the need for a separate answer to be filed in Opposition No. 91186821, may be presented on the same record and briefs.¹

Pursuant to the Board's practice, the consolidated opposition will adopt the schedule of the later-filed proceeding. In Opposition No. 91186821, on November 14, 2008, the parties filed a stipulation to extend applicant's time to answer to January 15, 2009. The stipulation is approved. Conference, disclosure, discovery, and trial dates are reset below.

Deadline for Discovery Conference	2/14/09
Discovery Opens	2/14/09
Initial Disclosures Due	3/16/09
Expert Disclosures Due	7/14/09
Discovery Closes	8/13/09
Plaintiff's Pretrial Disclosures	9/27/09
Plaintiff's 30-day Trial Period Ends	11/11/09
Defendant's Pretrial Disclosures	11/26/09
Defendant's 30-day Trial Period Ends	1/10/10
Plaintiff's Rebuttal Disclosures	1/25/10
Plaintiff's 15-day Rebuttal Period Ends	2/24/10

¹ The Board file will be maintained in Opposition No. 91181364 as the "parent" case, but all papers filed herein must include the proceeding numbers of all consolidated cases in ascending order.

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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.

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>