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

Proceeding	91186980
Party	Defendant Jarrow Formulas, Inc.
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Attachments	SUSTAIN - Consented motion to consolidate - WorkSite Acrobat Integration.pdf ( 5 pages )(142295 bytes )

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

JARROW FORMULAS, INC.	)	
	)	
	)	Opposition No. 91186397
	)	
v.	)	Serial No. 77/141,160
	)	
DR. FORD ALBRITTON IV	)	Mark: SUSTAIN BIOLOGICS
	)	
	)	
Applicant.	)	

AND

DR FORD ALBRITTON IV	)	
	)	
	)	Opposition No. 91186980
	)	
v.	)	Serial No. 78/892,606
	)	
JARROW FORMULAS, INC	)	Mark: SUSTAIN
	)	
	)	
Applicant.	)	

**CONSENTED TO MOTION TO CONSOLIDATE**

Jarrow Formulas, Inc. (“JFI” or “Opposer”) hereby moves to consolidate Oppositions Nos. 91186397 and 91186980, pursuant to Federal Rule of Civil Procedure 42(a), Trademark Rules 2.116 and 2.104(b) and Section 511 of the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”).

JFI further moves to schedule all dates in the consolidated proceeding to conform to those currently set in Opposition No. 91186980.

## **Consolidation**

On September 12, 2008, JFI filed a Notice of Opposition against the registration of Application No. 77/141,160 for SUSTAIN BIOLOGICS filed by Ford Albritton IV (“Albritton”) for the goods “vitamins and nutritional and dietary health supplements” in International Class 005. The TTAB assigned this proceeding Opposition No. 91186397 (the “397 Opposition”). Albritton filed his Answer on October 22, 2008.

On October 14, 2008, Albritton filed a Notice of Opposition against the registration of Application No. 78/892,606 for SUSTAIN filed by JFI for the goods “dietary and nutritional supplements” in International Class 005. The TTAB assigned this proceeding Opposition No. 9186980 (the “980 Opposition”). JFI filed its Answer on November 21, 2008.

Counsel for the parties have held a consolidated discovery conference on November 24, 2008, in accordance with 37 CFR 2.120(a)(2), pertaining to both oppositions, and have consented to consolidation of these oppositions.

These opposition proceedings involve the same parties, and the marks in each opposed application identify overlapping goods in Class 5. Moreover, both opposition proceedings involve the parties’ relative rights to register trademarks comprised in whole or in part of the term SUSTAIN in connection with such goods. The mark which is opposed by Albritton is, in part, the basis for JFI’s opposition to Albritton’s application. Therefore, there are common questions of law and fact and consolidation of these proceedings will facilitate judicial economy without prejudice to either party.

**Dates**

JFI requests that the instant proceedings be consolidated under the earliest filed matter, Opposition Proceeding No. 91186397. JFI requests that the trial dates be rescheduled for the new consolidated matter consistent with 37 CFR § 2.121(b)(2), as follows:

Initial Disclosures Due	January 22, 2009
Expert Disclosures Due	May 22, 2009
Discovery Period to Close:	June 21, 2009
JFI's Pretrial Disclosures Due: (in position of plaintiff in '397 opposition)	August 5, 2009
30-day testimony period for JFI (in position of plaintiff in '397 opposition) to close:	September 19, 2009
Albritton's Pretrial Disclosures Due: (in position of defendant in '397 opposition and plaintiff in '980 opposition)	October 4, 2009
30-day testimony period for Albritton (in position of defendant in '397 opposition and plaintiff in '980 opposition) to close:	November 18, 2009
JFI's Rebuttal Disclosures Due: (in position of defendant in '980 opposition, and plaintiff in '397 opposition)	January 1, 2010
30-day testimony period for JFI (in position of defendant in '980 opposition, and plaintiff in '397 opposition) to close:	January 16, 2010
Albritton's Rebuttal Disclosures Due: (in position of plaintiff in '980 opposition)	February 1, 2010
15-day rebuttal testimony period for Albritton (in position of plaintiff in '980 opposition)	

to close:


March 3, 2010

Albritton's attorney, Dyan M. House, has stipulated to all the relief requested in this motion.

WHEREFORE, it is respectfully requested that the Oppositions cited above be consolidated.

Respectfully submitted,

Date: December 1, 2008

By: 

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Attorneys for Applicant  
Jarrow Formulas, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was sent via electronic mail, with the consent of the Opposer's counsel, on this 1<sup>st</sup> day of December 2008, to:

Robert D. McCutcheon (rmccutcheon@munckcarter.com)  
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