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

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| Proceeding | 91188391 |
| Party | Defendant Sociedad Anonima Damm |
| Correspondence Address | Lisa A. Dunner Dunner Law PLLC 3243 P Street, N.W. Washington, DC 20007 UNITED STATES ldunner@dunnerlaw.com |
| Submission | Motion to Consolidate |
| Filer's Name | Lisa A. Dunner |
| Filer's e-mail | ldunner@dunnerlaw.com,asikich@dunnerlaw.com |
| Signature | /Lisa A. Dunner/ |
| Date | 12/11/2009 |
| Attachments | Consented motion to consolidate.pdf (4 pages)(127472 bytes) |

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

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|-------------------------------|---|----------------------------------|
| HIJOS DE RIVERA, S.A., |) | |
| |) | |
| Opposer/Petitioner, |) | Opposition No. 91192139 |
| |) | Opposition No. 91188391 |
| v. |) | Cancellation No. 92050179 |
| |) | |
| |) | |
| SOCIEDAD ANONIMA DAMM, |) | |
| |) | |
| Applicant/Respondent. |) | |
| |) | |

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

CONSENTED MOTION TO CONSOLIDATE

Pursuant to Fed. R. Civ. P. 42(a) and TBMP §511, Sociedad Anonima Damm (“Damm”), by its attorneys, hereby moves the Trademark Trial and Appeal Board (“Board”) to consolidate Opposition No. 91192139, Opposition No. 91188391 and Cancellation No. 92050179. The attorney of record for Hijos de Rivera, S.A. (“Hijos”) has given consent to this Motion to Consolidate via email on December 11, 2009. In support of this consented motion, Damm states as follows:

1. Cancellation No. 92050179 was filed by Hijos on November 11, 2008 against Damm’s “DAMM 1876 ESTRELLA DAMM LAGER BEER PREMIUM QUALITY CERVEJA LAGER BIERE LAGER BIRRA LAGER CERVEZA LAGER AUGUST K DAMM & Design” mark,

Reg. No. 3,463,924. In this Petition for Cancellation, Hijos has claimed priority and likelihood of confusion and relies on its Reg. No. 2,165,199.

2. Opposition No. 91188391 was filed by Hijos on January 14, 2009 against Damm's "ESTRELLA DAMM INEDIT" mark, Ser. No. 77/502,282. In this Opposition, Hijos has claimed priority and likelihood of confusion and relies on its Reg. No. 2,165,199.

3. Opposition No. 91192139 was filed by Hijos on October 5, 2009 against Damm's "ESTRELLA DAMM INEDIT TRADICIÓN CERVECERA AUGUST KUENTZMANN DAMM FUNDADOR DE CERVEZAS DAMM 1876 & Design" mark, Ser. No. 77/658,333. In this Opposition, Hijos has claimed priority and likelihood of confusion and relies on its Reg. No. 2,165,199.

4. "When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases." TBMP §511. Furthermore, "[i]n determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense which may be gained from consolidation, against any prejudice or inconvenience which may be caused thereby." *Id.* "Identity of the parties is another factor considered by the Board in determining whether consolidation should be ordered." *Id.*

5. Consolidation of Opposition No. 91192139, Opposition No. 91188391 and Cancellation No. 92050179 is appropriate because they present common questions of law and fact in that the parties in each proceeding are the same, the grounds for opposition/cancellation are the same in each proceeding, and the affirmative defenses are related in each proceeding.

6. Consolidation is also appropriate given that the proceedings are all at a relatively early stage such that consolidation will conserve the resources of both parties and further the Board's interest in efficiency and economy. Discovery has not begun in any of the three proceedings, so

consolidation would be equally advantageous to both parties in the avoidance of duplication of effort, loss of time and the extra expense involved in conducting the proceedings separately.

World Hockey Ass'n v. Tudor Metal Products Corp., 185 USPQ 246 (TTAB 1975).

WHEREFORE, given that consolidation involves the same questions of law and fact, will conserve the resources of both the parties and the Board, and has been agreed upon by the parties, Damm respectfully requests that the Board grant this consolidation request.

Respectfully submitted,

SOCIEDAD ANONIMA DAMM

Dated: December 11, 2009

By:



Lisa A. Dunner
DUNNER LAW PLLC
3243 P Street, N.W.
Washington, DC 20007

Attorney for Damm

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
CONSENTED MOTION TO CONSOLIDATE was served on Mr. Justin Young, counsel for
Hijos, at his address of record by email on this date.

This 11th day of December, 2009



Attorney for Damm