

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

Mailed: January 19, 2010

Opposition No. 91191159
Opposition No. 91191160
Opposition No. 91191161
Opposition No. 91191162
Opposition No. 91191163
Opposition No. 91191164
Opposition No. 91191165
Opposition No. 91192776

Upward Unlimited

v.

United Football League, LLC

Frances S. Wolfson, Interlocutory Attorney:

On December 4, 2009, opposer filed a motion to consolidate Opposition Nos. 91191159, 91191160, 91191161, 91191162, 91191163, 91191164, and 91191165. The motion has been fully briefed. In its reply brief, opposer asked that another opposition, Opposition No. 91192776, be included in the consolidation.

On January 13, 2010, the Board convened a telephone conference to rule on opposer's motion. Participating in the conference were opposer's counsel, Doug Lineberry, Esq. and Tim Williams, Esq.; applicant's counsel, Bruce Jobse, Esq., and the above-referenced Board interlocutory attorney.

The Board initially invited applicant's counsel to elaborate on its objection to consolidation. Mr. Jobse raised three concerns: that applicant may be prejudiced by consolidation if not allowed to take more than 75 interrogatories; that opposer's pleaded mark(s) needed to be specified in each case; and that the trial schedule could be subject to disruption if additional oppositions are filed against some 10 or so currently pending applications for which extensions of time to oppose have been filed. The Board addressed each of applicant's concerns.

First, with respect to the need for a more definite statement in the notice of opposition as to the pleaded marks belonging to opposer, the Board agrees with applicant. Opposer has pleaded ownership and prior use of a "star design" but none of the notices of opposition sets forth precisely what the marks are that opposer claims are likely to be confused with applicant's marks. In view thereof, opposer will be allowed time to amend the notices of opposition, and applicant will be allowed time to file amended answers thereto.

With respect to applicant's answers to the amended notices of opposition, the Board directed applicant to formally admit or deny (or admit in part and deny in part) those paragraphs wherein applicant currently states "the application speaks for itself."

In light of the clarification that is expected from the pleadings amendments, there is no need at this point to allow for greater than 75 interrogatories on behalf of either party. Regarding the trial schedule, which is reset below, the Board explained that should new oppositions be filed by opposer against applicant's 10 or so currently pending applications, the Board would entertain a motion (including a request to hear the motion by telephone conference) to consolidate any such case(s) with this proceeding.

Accordingly, opposer's motion to consolidate is hereby granted. Opposition Nos. 91191159, 91191160, 91191161, 91191162, 91191163, 91191164, 91191165 and 91192776 are hereby consolidated and may be presented on the same record and briefs. Papers should bear the number of each of the consolidated cases, although Opposition No. 91191159 is treated as the "parent" case, and most of the papers filed by the parties, or issued by the Board, will be placed only in the file of the parent case. The parties need not file a copy for each consolidated case; a single copy, bearing the number of each consolidated case, normally is sufficient.

As an exception however: the amended notices of opposition and amended answers should be filed in the separate proceeding files, following which subsequent filings may generally be filed only in the parent case.

Consolidated cases do not lose their separate identity because of consolidation. Each proceeding retains its separate character and requires entry of a separate judgment. See Wright & Miller, Federal Practice and Procedure: Civil §2382 (1971).

Trial Schedule

Opposer is allowed until February 16, 2010 to file amended notices of opposition in the eight cases. Applicant is allowed until March 16, 2010 to file answers to the amended notices.

Trial dates, including conferencing, disclosures, and the close of discovery, are reset as indicated below.

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| Deadline for Discovery Conference | 4/5/2010 |
| Discovery Opens | 4/5/2010 |
| Initial Disclosures Due | 5/5/2010 |
| Expert Disclosures Due | 9/2/2010 |
| Discovery Closes | 10/2/2010 |
| Plaintiff's Pretrial Disclosures Due | 11/16/2010 |
| Plaintiff's 30-day Trial Period Ends | 12/31/2010 |
| Defendant's Pretrial Disclosures Due | 1/15/2011 |
| Defendant's 30-day Trial Period Ends | 3/1/2011 |
| Plaintiff's Rebuttal Disclosures Due | 3/16/2011 |
| Plaintiff's 15-day Rebuttal Period Ends | 4/15/2011 |
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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.