

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

DUNN

Mailed: January 13, 2011

Opposition No. 91193157

KFC Corporation

v.

Doctor's Associates Inc.

Opposition No. 91193162

A&W Restaurants, Inc

v.

Doctor's Associates Inc.

Opposition No. 91193163

Pizza Hut, Inc.

v.

Doctor's Associates Inc.

Opposition No. 91193164

Taco Bell Corp.

v.

Doctor's Associates Inc.

Opposition No. 91193165

Long John Silver's Inc.

v.

Doctor's Associates Inc.

Opposition No. 91193183

Firehouse Restaurant Group,
Inc.

v.

Doctor's Associates Inc.

Opposition No. 91193157

Domino's IP Holder LLC

v.

Doctor's Associates Inc.

Elizabeth A. Dunn, Attorney (571-272-4267):

In each proceeding listed above, a different opposer brings the same claim that the opposed mark FOOTLONG, the subject of Application Serial No. 77324328 (seeking registration pursuant to Trademark Act Section 2(f)), is merely descriptive and/or generic as applied to sandwiches.¹ In each proceeding, an answer has been filed, and discovery remains open.²

Because the Board's decision may have a bearing on all of the proceedings listed above, the Board sua sponte suspends the proceedings pending the Board's disposition of the motion for summary judgment on the claim that the term

¹ Opposition No. 91193167 also was filed against this application but was dismissed on October 27, 2010.

² The Board notes that in Opposition Nos. 91193183 and 91193982, applicant filed a motion to compel. Upon resumption of

is generic, now pending in related Opposition No. 91192657 (*Sheetz of Delaware, Inc. v. Doctor's Associates Inc.*). See Trademark Rule 2.117.

The parties are advised that Board may exercise its discretion and consolidate these proceedings in the future rather than address seven separate trials on essentially the same claim. See 9A Fed. Prac. & Proc. Civ. §2384 (3d ed.) ("If an appropriate common question exists, federal courts often have consolidated actions despite differences in the parties."); Trademark Trial and Appeal Board Manual of Procedure (TBMP) §511 (2nd ed. rev. 2004). When actions by different plaintiffs are consolidated, and the plaintiffs are represented by different counsel, the plaintiffs may be required to appoint one lead counsel to supervise and coordinate the conduct of the plaintiffs' cases. Consolidated cases do not lose their separate identity because of consolidation. Each proceeding retains its separate character and requires entry of a separate judgment.³

Proceedings in each case listed above are suspended pending the Board's disposition of the motion for summary judgment in related Opposition No. 91192657.

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proceedings, opposer's time to respond to the motions will be reset.

³ Because these proceedings now are not consolidated, a copy of this order will be placed in each proceeding.