

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

DUNN

Mailed: February 22, 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.

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

Inasmuch as the Board issued a denial of the motion for summary judgment in related Opposition No. 91192657 on January 19, 2011, proceedings herein are resumed.

To promote efficiency and avoid duplicative effort by the Board and the parties, the Board consolidates Opposition Nos. 91193157, 91193162, 91193163, 91193165 and 91193165, the five oppositions listed above. 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). As noted in the Board's January 13, 2011 order, there are eight proceedings which involve the identical claims that the opposed mark FOOTLONG, the subject of Application Serial No. 77324328, is merely descriptive and/or generic as applied to sandwiches. With respect to these five proceedings, while the opposers listed above are identified as separate legal entities, each notice of opposition was signed by the same attorney, Philip Davison, on behalf of YUM! Brands, Inc. Accordingly, consolidation will cause no conflict in opposers' representation.¹

¹ To the extent that the consolidation makes appropriate (for example, it takes longer to prepare discovery responses for five

Consolidated cases do not lose their separate identity because of consolidation. Each proceeding retains its separate character and requires entry of a separate judgment. Opposition Nos. 91193157, 91193162, 91193163, 91193165 & 91193165 may be presented on the same record and briefs. The record will be maintained in Opposition No. 91193157 as the "parent" case. The parties should no longer file separate papers in connection with each proceeding, but file only a single copy of each paper in the parent case. Each paper should bear the numbers of all consolidated proceedings in ascending order as in the case caption set forth above. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings and a copy of the final decision shall be placed in each proceeding file. See Wright & Miller, Federal Practice and Procedure: Civil §2382 (updated 2011).

Disclosure, discovery, and trial dates for this consolidated proceeding are reset below:

Expert Disclosures Due	5/23/2011
Discovery Closes	6/22/2011
Plaintiff's Pretrial Disclosures	8/6/2011
Plaintiff's 30-day Trial Period	9/20/2011
Ends	
Defendant's Pretrial Disclosures	10/5/2011
Defendant's 30-day Trial Period	11/19/2011
Ends	

different entities), opposers may move for any necessary extension of time.

Plaintiff's Rebuttal Disclosures	12/4/2011
Plaintiff's 15-day Rebuttal Period	1/3/2012
Ends	

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.

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