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

Proceeding	91194327
Party	Plaintiff The Pep Boys Manny, Moe & Jack of California
Correspondence Address	MARSHA G. GENTNER JACOBSON HOLMAN PLLC 400 SEVENTH STREET NW WASHINGTON, DC 20004 UNITED STATES mcuccias@jhip.com, trademark@jhip.com, mgentner@jhip.com, joyhenart@jhip.com
Submission	Motion to Consolidate
Filer's Name	Marsha G. Gentner
Filer's e-mail	ipmail@dykema.com, mgentner@dykema.com
Signature	/Marsha G. Gentner/
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THE PEP BOYS MANNY, MOE & JACK OF	:	
CALIFORNIA,	:	
	:	
Opposer,	:	OPPOSITION NO. 91194327
	:	
v.	:	
	:	
KENT G. ANDERSON,	:	
	:	
Applicant.	:	
-----	X	

**MOTION TO CONSOLIDATE AND TO
RESET TRIAL DATES**

Opposer, The Pep Boys Manny, Moe & Jack (“Pep Boys”), by and through its undersigned counsel, hereby moves this honorable Board to consolidate the above captioned action, for purposes of trial and briefing, with Opposition no. 91195766 (the “’766 Opposition”). By Motion filed on this date in Consolidated Opposition no. 91184524 (the “’524 Opposition”), Opposer is seeking to consolidate trial and briefing of the latter opposition with the ‘766 Opposition, as well. In support of its Motion, Pep Boys submits the following.

I. THE PARTIES, MARKS AND STATUS OF THE SUBJECT OPPOSITIONS

The present Opposition concerns application serial no. 76259991 (for the mark FUTURE). The ‘524 Opposition concerns applications serial nos. 76634950 (also for the mark FUTURE), 76545706 (for the mark FUTURISTIC), and 76537316 (also for the mark FUTURE). The ‘766 Opposition concerns application serial no. 76585316 (also for the mark FUTURISTIC)..

In each Opposition, the parties are identical – Pep Boys is the sole Opposer and Kent G. Anderson (“Anderson”) is the sole Applicant. Further, in each Opposition, Pep Boys has pleaded the identical marks and registrations.

In the ‘524 Opposition, pre-trial disclosures are due July 31, 2013, with Opposer’s testimony period set to run from August 15 through September 14, 2013. In the present Opposition, pre-trial disclosures are due August 23, 2013, with Opposer’s testimony period set to run from September 7 through October 7, 2013. In the ‘766 Opposition, Opposer’s pre-trial disclosures are due August 30, 2013, with Opposer’s testimony period set to run from September 14 through October 14, 2013.

II. CONSOLIDATION WILL SAVE TIME, EFFORT & EXPENSE WITHOUT UNDUE DELAY

The Oppositions sought to be consolidated involve common issues of law and fact: the parties are identical; the pleaded marks and registrations are the same; the opposed mark in the present Opposition is identical to those in the ‘524 Opposition, which, in turn, includes the same mark as in the ‘766 Opposition; and all of the Oppositions plead a likelihood of confusion claim. Further, the opposed goods and services in the present Opposition and the ‘766 Opposition and the ‘524 Opposition include the same or overlapping goods and services.

In the absence of consolidation, there will only be one day (September 14, 2013) when Opposer’s testimony periods in all three Oppositions overlap (and only one week when the present Opposition overlaps with the ‘524 Opposition). This effectively means that Opposer will have to present the same evidence and testimony as much as three times (or at least twice) over a two month period. The same will be true of Applicant Anderson’s testimony period in each Opposition. Patently, consolidation will save both Opposer and Applicant time, effort and expense. It also will avoid duplicative materials being filed and held in the records of the Board.

Further, the consolidation will not cause undue delay. Opposer does not seek to extend the current trial deadlines in the '766 Opposition. Thus, consolidation will only delay trial in this proceeding by one week. This slight additional delay is more than counterbalanced by the savings in time, effort and expense.

III. TO THE EXTENT NECESSARY, OPPOSER REQUESTS THAT TRIAL DATES BE RESET

To the extent necessary, Opposer formally requests an extension of the current deadlines in the present action by one week, to coincide with the current deadlines in the '766 Opposition. Opposer respectfully submits that the foregoing sets forth substantial good cause for the extension sought.¹

WHEREFORE, for all of the foregoing reasons, Opposer respectfully submits that its Motion to Consolidate and to Reset Trial Dates should be granted.

Respectfully submitted,

THE PEP BOYS MANNY, MOE & JACK
OF CALIFORNIA

By: /Marsha G. Gentner/
Marsha G. Gentner
Dykema Gossett PLLC
Franklin Square, Third Floor West
1300 I Street N.W.
Washington, DC 20005

Attorneys for Opposer

¹ Opposer notes that the Board's July 10, 2013 Order requires that Opposer set forth a "detailed status report regarding the progress of the parties' settlement negotiations." Opposer respectfully advises, however, that the previous extensions were requested in order for the parties to complete discovery – in particular, to enable the resolution of discovery issues Opposer had raised with Applicant – not for purposes of settlement.

Certificate of Service

The undersigned hereby certifies that on this 25th day of July, 2013, the foregoing Motion to Consolidate and to Reset Trial Dates, was served by first class mail and postage prepaid, on the following correspondent of record for Applicant:

Dwayne L. Bently
DL BENTLEY LAW GROUP PLLC
16 Court Street, Suite 2007
Brooklyn, NY 11241

with a copy to :

Daniel Kirshner
199 Route 18 South
East Brunswick, NJ 08816

/Teresa L. Brooks/