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

Mailed: March 2, 2012

Opposition No. **91202908**
(parent)
Opposition No. 91202909
Opposition No. 91202910
Opposition No. 91202911
Opposition No. 91202912
Opposition No. 91202913
Opposition No. 91202915
Opposition No. 91202916
Opposition No. 91202917

The Keep a Breast Foundation

v.

Twin Tiger Assets Corp.

Cheryl S. Goodman, Interlocutory Attorney:

Pursuant to Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (2), the parties to this proceeding conducted a discovery conference on March 1, 2012 with Board participation.[1]

Participating in the conference were Gary Sirota and Sean Flaherty, counsel for opposer, and Cheryl. Black and Charles Awlen, counsel for applicant. Present for the Board was the above-identified interlocutory attorney.

[1] Applicant's request for Board participation in the discovery conference was made via phone on February 3, 2012.

This order memorializes what transpired during the conference.

Consolidation

Applicant filed a motion to consolidate on January 27, 2012, in all the proceedings. Opposer has indicated its consent to consolidate.[2]

The Board finds that consolidation is appropriate as each proceeding involves the same parties, similar marks and at least some of the same questions of law and fact. When cases involving the same questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. See Fed. R. Civ. P. 42(a); *Regatta Sports Ltd., v. Telux-Pioneer, Inc.*, 20 USPQ2d 1154 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991); and TBMP Section 511. Accordingly, the motion to consolidate is granted.

Opposition Nos. 91202908, 91202909, 91202910, 91202911, 91202912, 91202913, 91202915, 91202916 and 91202917 are hereby consolidated and while each proceeding retains its separate character, the cases may be presented on the same record and briefs. The record will be maintained at the Board in Opposition No. 91202908 as the "parent" case, and all papers filed in the parent case, but all papers filed in

[2] Opposer is directed to TBMP 405.03(c)(3d ed. 2011) with regard to discovery relating to multiple marks.

the consolidated case should include all proceeding numbers in ascending order.[3]

Although the dates in all proceedings are the same, the Board is resetting the opening of discovery by 15 days to open on March 2, 2012, at the parties' request.

The Board advised the parties of the imposition of the Board's standard protective agreement for confidential information.[4] The parties advised that they would modify the protective agreement. The modified protective agreement should be filed with the Board.

The parties' stipulated to e-mail service. The parties will work out a written agreement to address e-mail service and service of confidential discovery responses/documents under the protective agreement.

The Board provided the parties with general information regarding the nature of the parties' initial disclosures under Fed. R. Civ. P. 26(a)(1)(A)(i) and (ii)[5], expert disclosures, and pretrial disclosures. The Board directed the parties to the TBMP, Sections 400 and 700, third edition for more information. Disclosures are subject to

[3] The parties are ordered to advise the Board of any additional related inter partes proceedings at the Board to that the Board can determine whether consolidation is appropriate.
[4] The Board's "standard protective agreement" can be viewed using the following web address: http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp.
[5] Fed. R. Civ. P. 26(a)(1)(A)(iii)-(iv) are not applicable.

supplementation as set forth under the federal rules of civil procedure.[6]

The parties were advised that formal discovery (i.e., interrogatories, request for production, depositions, request for admissions) may be taken only after service of initial disclosures.[7] In addition, no summary judgment motion (i.e., those not involving claim or issue preclusion or jurisdiction) may be filed until after service of initial disclosures.

The Board reviewed the parties' pleadings and found opposer's pleading of dilution insufficient with respect to any involved intent-to-use applications, as opposer did not allege fame before the filing date of the application.[8] Leave to amend is granted to file an amended pleading to correct this defect.

The parties were advised that the consent suspension and extension motion forms available on ESTTA should not be used until after the deadline for initial disclosures has

[6] The parties are advised that generally, initial and expert disclosures need not to be filed with the Board unless the filing is in connection with a discovery motion, motion for summary judgment or notice of reliance. A party using an expert must notify the Board that it has made the required disclosure, but copies of the actual disclosure need not be filed. Similarly, the parties are advised that pretrial disclosures, need not be filed with the Board unless the disclosures are related to a motion (e.g., a motion to strike witness testimony or to quash).

[7] Traditional discovery may be served concurrently with the service of initial disclosures. TBMP Section 403.02.

[8] From a review of the various proceedings, it appears that the '908, '909, '910, '911, '913, '916 and '917 proceedings involve

passed.[9] Prior to that date, the parties should file any motion to extend or suspend in ESTTA as a general filing with the proposed disclosure, discovery and trial schedule set forth in the motion.[10]

The Board informed the parties regarding the possibilities to streamline the proceeding and save time and expense by considering Accelerated Case Resolution ("ACR") or ACR like efficiencies which may include limiting discovery, shortening the discovery period, and taking advantage of stipulations. The Board further advised the parties that such stipulations should be filed with the Board and, if the parties agree to an abbreviated schedule for discovery or trial, such agreement also should be filed with the Board. If the parties agree to ACR, it is preferable to notify the Board early in the discovery period so that a revised discovery and briefing schedule can issue.[11] The Board informed the party of the options to use third party mediation or arbitration, at the parties' expense, to resolve the dispute.

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intent to use applications, while the '912 and '915 proceedings involve use based applications.

[9] The Board recommends that the parties file papers via the Board's electronic filing system, ESTTA.

[10] In ESTTA, the parties should check the "What's New in ESTTA" alert for further information.

[11] For more information regarding accelerated case resolution see TBMP Sections 528.05(a)(2) and 702.04. For information regarding utilizing stipulations in non-ACR Board cases see TBMP Sections 702.04(e) and 705. The parties can also view the ACR case list at the following web address http://www.uspto.gov/trademarks/process/appeal/index.jsp.

The parties were advised of the availability of telephone conferences with the assigned interlocutory attorney to resolve disputes between the parties or to expedite issuance of orders on certain matters or to discuss proceeding with ACR.

The parties indicated they are not interested in suspension for settlement or ACR at this time.[12]

Dates in the consolidated proceeding are reset as follows:

Discovery Opens	**3/2/12**
Initial Disclosures Due	**4/1/12**
Expert Disclosures Due	**7/30/12**
Discovery Closes	**8/29/12**
Plaintiff's Pretrial Disclosures	**10/13/12**
Plaintiff's 30-day Trial Period Ends	**11/27/12**
Defendant's Pretrial Disclosures	**12/12/12**
Defendant's 30-day Trial Period Ends	**1/26/13**
Plaintiff's Rebuttal Disclosures	**2/10/13**
Plaintiff's 15-day Rebuttal Period Ends	**3/12/13**

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.

[12] If the parties were not prepared to discuss all the topics identified in the notice of institution or identified under Fed. R. Civ. P. 26(f) at the discovery conference after the Board excused itself, they should schedule a date to reconvene to discuss these topics.