

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

Mailed: November 15, 2012

Opposition No. 91205664

Opposition No. 91206788

Basic American, Inc.

v.

Mastronardi Produce Ltd.

**M. Catherine Faint,
Interlocutory Attorney:**

Now before the Board are opposer's motion (filed October 12, 2012) to strike, or, in the alternative, for judgment on the pleadings, and applicant's cross-motion (filed November 1, 2012) to amend the answer. By way of its brief in opposition to the motion to strike, applicant states that it has filed an amended answer which addresses all of the issues raised in the motion to strike, and that the motion to strike can be dismissed as moot. In view thereof, the Board considers the motion to amend before considering the motion to strike.

Motion to Amend

Amendments to pleadings in inter partes proceedings before the Board are governed by Fed. R. Civ. P. 15, made applicable to Board proceedings by operation of Trademark Rule 2.116(a).

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See Trademark Rule 2.107. Inasmuch as applicant's amended answer was not filed within twenty-one days of service of the original answer, and the original answer was not one to which a responsive pleading is required, applicant may amend its answer only by providing opposer's written consent or by obtaining leave of the Board. See Fed. R. Civ P. 15(a)(2). Opposer's written consent to the amended answer is not of record. In view thereof, the Board must determine whether to grant applicant leave to amend the answer.

In making such a determination, the Board is mindful that leave should be freely given when justice so requires. *Id.* The Board has reviewed the amended answer and determined that allowing the amendment would neither violate settled law nor be prejudicial to the rights of opposer. See TBMP § 507.01 (3d ed. rev. 2012). See also *O.C. Seacrets Inc. v. Hotelplan Italia S.p.A.*, 95 USPQ2d 1327, 1328 (TTAB 2010). Moreover, the amended answer sufficiently addresses all of the issues raised in opposer's motion to strike by removing all of the affirmative defenses (i.e., paragraphs 13-20) raised in the original answer. In view thereof, the Board grants leave to amend the answer, applicant's cross-motion to amend is granted, and the amended answer is applicant's operative pleading in this proceeding.

Motion to Strike

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In view of the Board's acceptance of the amended answer, opposer's motion to strike, or, in the alternative, for judgment on the pleadings, is moot.

Consolidated

It has come to the Board's attention that the above-captioned proceedings involve the same parties and common questions of law and fact. Accordingly, the Board consolidates these proceedings. See Fed. R. Civ. P. 42(a); see also, *8440 LLC v. Midnight Oil Co.*, 59 USPQ2d 1541, 1541 n.1 (TTAB 2001); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991).

The consolidated cases may be presented on the same record and briefs. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989) and *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993).

The Board file will be maintained in Opposition No. 91205664 as the "parent" case. As a general rule, from this point onward, only one copy of any submission should be filed herein; but that copy should include both proceeding numbers in its caption in ascending order.

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by

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the respective pleading; and a copy of the decision shall be placed in each proceeding file.

Schedule

Dates in this consolidated proceeding remain as set in the parent proceeding, as copied below.

Deadline for Discovery Conference	11/26/2012
Discovery Opens	11/26/2012
Initial Disclosures Due	12/26/2012
Expert Disclosures Due	4/25/2013
Discovery Closes	5/25/2013
Plaintiff's Pretrial Disclosures	7/9/2013
Plaintiff's 30-day Trial Period Ends	8/23/2013
Defendant's Pretrial Disclosures	9/7/2013
Defendant's 30-day Trial Period Ends	10/22/2013
Plaintiff's Rebuttal Disclosures	11/6/2013
Plaintiff's 15-day Rebuttal Period Ends	12/6/2013

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

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oral hearing will be set only upon request filed as provided by
Trademark Rule 2.129.
