UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: September 22, 2015

Opposition No. 91203352 (**Parent Case**)

Top Tobacco L.P.

v.

National Tobacco Company, L.P.

Opposition No. 91210176

Top Tobacco L.P.

v.

North Atlantic Operating Company, Inc.

George C. Pologeorgis,
Interlocutory Attorney:

On August 1, 2014, Top Tobacco L.P. ("Opposer") filed a motion to consolidate the above-captioned proceedings in Opposition No. 91210176. The motion is fully briefed.

By order dated October 10, 2014 issued in Opposition No. 91210176, the Board suspended proceedings in Opposition No. 91210176[1] and deferred consideration of Opposer's motion to consolidate pending the disposition of National Tobacco

[1] The Board deems Opposition No. 91210176 suspended as of the filing date of Opposer's motion to consolidate, i.e., August 1, 2014.

Company, L.P.'s ("NTC") motion for summary judgment filed in Opposition No. 91203352. The Board noted in the aforementioned order that, in the event the Board grants NTC's motion for summary judgment in Opposition 91203352 and therefore dismisses that opposition in favor of NTC, Opposer's motion to consolidate would be deemed moot.

On September 18, 2015, the Board denied NTC's motion for summary judgment in Opposition No. 91203352. Accordingly, Opposition No. 91210176 is hereby resumed so that the Board may consider Opposer's motion to consolidate.

For the reasons discussed below, Opposer's motion to consolidate is **GRANTED**.

When cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases. *See* Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense which may be gained from consolidation, against any prejudice or inconvenience which may be caused thereby.

Consolidation is discretionary with the Board, and may be ordered upon motion granted by the Board, or upon stipulation of the parties approved by the Board, or upon the Board's own initiative. *See, e.g.*, *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993); and *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991).

Here, the Board notes that (1) the Opposer is the same in both proceedings, (2) Applicants are related companies,[2] (3) the goods at issue in both proceedings are the same, i.e., cigar wraps, (4) both proceedings involve common questions of law and fact that only concern Applicants' identified goods (not the involved marks), i.e., (i) whether Applicants' products are appropriately classified as "blunt wraps" or "cigar wraps," and (ii) what the intent of the closely-related Applicants was in branding their goods as "cigar wraps," and (5) both proceedings are still in the discovery stage. Further, the factual and legal determinations to be made will likely involve the same documents, admissions, interrogatory requests, deposition testimony, and expert reports and testimony. Moreover, consolidation will serve the interests of efficiency and judicial economy and avoid the possibility of reaching inconsistent conclusions regarding the merits of each case.

Finally, the fact that each Applicant is represented by different counsel is not a reason not to consolidate the cases at issue. Counsel for each Applicant can easily coordinate the conduct of the Applicants' cases with regard to their respective discovery and evidentiary needs by telephone and/or email, particularly since Applicants are related entities and there are common issues of law and fact concerning both opposition proceedings. Similarly, Opposer's counsel may easily coordinate with each of Applicants' counsels so as not to duplicate Opposer's discovery needs.

[2] In its answer to Opposer's notice of opposition in Opposition No. 91210176, North Atlantic Operating Company, Inc. ("NAOC") admitted that is an affiliate of NTC. *See* ¶ 3 of NAOC's answer.

In view of the foregoing, Opposer's motion to consolidate is **GRANTED** as well taken. Accordingly, Opposition No. 91203352 and Opposition No. 91210176 are hereby consolidated and may be presented on the same record and briefs. *See Hilson Research Inc. v. Society for Human Resource Management*, *supra*; and *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

The Board file for these consolidated cases will be maintained in Opposition No. 91203352 as the "parent case." From this point on, only a single copy of any motion and any paper should be filed, and each such motion or paper should be filed in the parent case of the consolidated proceedings (except that an answer should be filed in the corresponding proceeding), but caption all consolidated proceeding numbers, listing the parent case first.[3]

The parties are further advised that, despite being consolidated, each proceeding retains its separate character and requires entry of a separate judgment. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings; a copy of the decision shall be placed in each proceeding file.

In accordance with Board practice, discovery, disclosure and trial dates are reset to conform to the dates latest set in the proceedings that are being consolidated. Accordingly, disclosure, discovery and trial dates for these now consolidated proceedings are reset as follows:

Expert Disclosures Due **12/15/2015**

[3] The parties should promptly inform the Board of any other Board proceedings or related cases within the meaning of Fed. R. Civ. P. 42, so that the Board can consider whether further consolidation is appropriate.

Discovery Closes	**1/14/2016**
Plaintiff's Pretrial Disclosures Due	**2/28/2016**
Plaintiff's 30-day Trial Period Ends	**4/13/2016**
Defendant's Pretrial Disclosures Due	**4/28/2016**
Defendant's 30-day Trial Period Ends	**6/12/2016**
Plaintiff's Rebuttal Disclosures Due	**6/27/2016**
Plaintiff's 15-day Rebuttal Period Ends	**7/27/2016**

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 Trademarks Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.