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

Proceeding	91215114
Party	Plaintiff Upper Shirley Vineyards, LLC, Shirley Plantation LLC
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Submission	Motion to Consolidate
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SHIRLEY PLANTATION, LLC
and
UPPER SHIRLEY VINEYARDS, LLC

Opposers,

v.

STILLHOUSE VINEYARDS, LLC

Applicant.

Opposition No.: 91215114

Application No.: 85/947,562

Mark: SHIRLEY PLANTATION

SHIRLEY PLANTATION, LLC
and
UPPER SHIRLEY VINEYARDS, LLC

Opposers,

v.

STILLHOUSE VINEYARDS, LLC

Applicant.

Opposition No.: 91216395

Application No.: 86/121,979

Mark: SHIRLEY

MOTION TO CONSOLIDATE OPPOSITION PROCEEDINGS

AND MEMORANDUM IN SUPPORT

Opposers Shirley Plantation, LLC and Upper Shirley Vineyards, LLC (“Opposers”) respectfully request, pursuant to TMBP Section 511 and Federal Rule of Civil Procedure 42(a), the Trademark Trial and Appeal Board (“Board”) to consolidate the opposition proceedings styled *Shirley Plantation, LLC and Upper Shirley Vineyards, LLC v. Stillhouse Vineyards, LLC*,

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Opposition Number 91215114, and *Shirley Plantation, LLC and Upper Shirley Vineyards, LLC v. Stillhouse Vineyards, LLC*, Opposition Number 91216395, and for such other relief as the Board deems just and proper. In support of this motion, Opposers state as follows:

1. Stillhouse Vineyards, LLC (“Stillhouse”) filed U.S. Trademark Application Serial No. 85/947,562 with the U.S. Patent and Trademark Office (“PTO”) on May 31, 2013. The PTO published Application Serial No. 85/947,562 for opposition on October 29, 2013. Opposers filed a Notice of Opposition to this Application on February 25, 2014. Stillhouse filed a Motion to Dismiss on April 4, 2014, and Opposers filed a Response to Motion to Dismiss on April 21, 2014.
2. Stillhouse filed U.S. Trademark Application Serial No. 86/121,979 with the PTO on November 18, 2013. The PTO published Application Serial No. 86/121,979 on April 15, 2014. Opposers filed a Notice of Opposition to this Application on May 14, 2014.
3. Both of the above opposition proceedings involve: (i) the same parties; (ii) highly similar marks (SHIRLEY PLANTATION and SHIRLEY); (iii) common questions of fact and law; (iv) similar, if not identical, allegations under Trademark Act Section 2(d) and the same alleged damage to Opposers, including an allegation based on the prior registered mark SHIRLEY PLANTATION, common to both oppositions; and (v) both arise from the same set of circumstances or series of occurrences.
4. Pursuant to TMBP Section 511 and Federal Rule of Civil Procedure 42(a), the above opposition proceedings should be consolidated into a single consolidated opposition proceeding.

MEMORANDUM IN SUPPORT

“When cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases.” TBMP Section 511; Fed. R. Civ. P. 42(a). “In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort and expense which may be gained from consolidation, against the prejudice or inconvenience which maybe caused thereby.” TBMP Section 511.

Consolidation in this instance will promote savings of time, effort and expense for all parties involved. Both of the opposition proceedings involve: (i) the same parties; (ii) highly similar marks (SHIRLEY PLANTATION and SHIRLEY); (iii) common questions of fact and law; (iv) similar, if not identical, allegations under Trademark Act Section 2(d) and the same alleged damage to Opposers, including an allegation based on the prior registered mark SHIRLEY PLANTATION, common to both oppositions; and (v) both arise from the same set of circumstances or series of occurrences.

A single joint opposition proceeding will decrease the likelihood of duplicative and expensive discovery, testimony and hearings. This is especially true with respect to written discovery, oral depositions and oral testimony. In the absence of a consolidated proceeding, Opposers, Stillhouse, and/or third parties will be required to produce the same witnesses and documents on multiple occasions in an effort to address the same or substantially identical issues. Consolidation will allow the parties to attempt to minimize any duplication of discovery, thereby saving all parties time, effort and expense. Moreover, consolidation will promote administrative economy and efficiency in that the Board will not be required to allocate twice the resources to handle the same or substantially identical issues that will inevitably arise in both

opposition proceedings. A consolidated proceeding will also ensure that there are no inconsistent rulings or holdings that may confuse or cloud the identical issues inherent in both opposition proceedings.

Prejudice or inconvenience may result from consolidation of TTAB inter parties proceedings in cases where, for example, the proceedings to be consolidated are at different stages (*see Lever Brothers Co. v. Shaklee Corp.*, 214 USPQ 654 (TTAB 1982)), the marks at issue differ (*see Envirotech Corp. v. Solaron Corp.*, 211 USPQ 724 (TTAB 1981)), or the issues in the proceedings differ (*see Izod, Ltd. V. La Chemise Lacoste*, 178 USPQ 440 (TTAB 1973)). None of these factors are applicable here, and no party will be prejudiced by the consolidation of this proceeding. Indeed, as stated above, consolidation will save all parties and the Board time, effort and expense. Additionally, both opposition proceedings are at the same stage – pre-discovery conference – and the marks and issues involved in both proceedings are similar.

Because the facts and issues in each opposition proceeding are identical and involve common parties and substantially similar marks, these opposition proceedings should be consolidated. This will avoid parallel litigation, resulting in more efficient allocations of time, effort and expense for both the parties and the Board.

CONCLUSION

Opposers respectfully request the Board to consolidate the opposition proceedings styled *Shirley Plantation, LLC and Upper Shirley Vineyards, LLC v. Stillhouse Vineyards, LLC*, Opposition Number 91215114, and *Shirley Plantation, LLC and Upper Shirley Vineyards, LLC v. Stillhouse Vineyards, LLC*, Opposition Number 91216395, and for such other relief as the Board deems just and proper.

Respectfully submitted,



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CERTIFICATE OF ELECTRONIC TRANSMISSION

The undersigned hereby certifies that on this 22 day of May 2014, the foregoing *Motion to Consolidate Opposition Proceedings and Memorandum in Support* was deposited with the United States Patent and Trademark Office, Trademark Trial and Appeal Board via electronic filing through their website at <http://esta.uspto.gov/>.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22 day of May 2014, the foregoing *Motion to Consolidate Opposition Proceedings and Memorandum in Support* was served upon Applicant by delivering a true and correct copy of same to counsel for Applicant via first class mail, return receipt requested, as follows:

Phillip Carter Strother
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Date: May 22 2014



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