

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Baxley

Mailed: June 7, 2018

Opposition No. **91217941**

Opposition No. **91217992**

Opposition No. **91218267**

Robert Kirkman, LLC

v.

Phillip Theodorou and Anna Theodorou

Opposition No. **91222005**

Opposition No. **91222719**

Opposition No. **91227277**

Opposition No. **91233571**

Opposition No. **91233806**

Cancellation No. **92068261**

Cancellation No. **92068613**

Robert Kirkman, LLC

v.

Phillip Theodorou and Steven Theodorou

(as consolidated)

Andrew P. Baxley, Interlocutory Attorney:

Because the above-captioned cancellation proceedings involve common parties and questions of law or fact to the above-captioned previously consolidated opposition proceedings, the Board hereby orders the consolidation of the opposition and

Opposition Nos. 91217941, 91217992, 91218267, 91222005, 91222719, 91227277, 91233571 and 91233806; Cancellation Nos. 92068261 and 92068613

cancellation proceedings.¹ See Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991); TBMP § 511 (2017). The consolidated cases may be presented on the same record and briefs. See *Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989); *Hilson Research Inc. v. Soc. for Human Res. Mgmt*, 26 USPQ2d 1423 (TTAB 1993).

The Board file will be maintained in Opposition No. 91217941 as the “parent” case. As a general rule, from this point onward, the parties should file only a single copy of any submission herein. That copy should be filed in the Board file for the parent case, but should include all of the consolidated proceeding numbers in the caption thereof. However, Defendants should file their answer in Cancellation No. 92068613 in the Board file for that proceeding.

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

¹ 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 TBMP § 511.

Plaintiff’s attorney contacted the above-signed Board attorney by telephone on June 5, 2018 to request Board participation in the parties’ mandatory discovery conference in Cancellation No. 92068261. Plaintiff’s attorney indicated that the parties were involved in the consolidated opposition proceedings.

If the parties become involved in any more opposition or cancellation proceedings, Plaintiff should notify the Board attorney who is identified in TTABVUE as being assigned to these consolidated proceedings upon commencement of the new proceedings so that the Board can consider consolidation or suspension issues.

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In keeping with Board practice, the Board will adopt the discovery and trial schedule for Cancellation No. 92068613, the most recently instituted of the consolidated proceedings. *See* TBMP § 511. Those dates are as follows.

The discovery period in the opposition proceedings is hereby suspended. If the parties served any discovery requests in those proceedings, the responding party or parties are allowed until September 2, 2018 to serve responses thereto.

Answer Due in Cancellation No. 92068613	7/4/2018
Deadline for Discovery Conference in Cancellations	8/3/2018
Discovery Re-Opens	8/3/2018
Initial Disclosures Due	9/2/2018
Expert Disclosures Due	12/31/2018
Discovery Closes	1/30/2019
Plaintiff's Pretrial Disclosures Due	3/16/2019
Plaintiff's 30-day Trial Period Ends	4/30/2019
Defendant's Pretrial Disclosures Due	5/15/2019
Defendant's 30-day Trial Period Ends	6/29/2019
Plaintiff's Rebuttal Disclosures Due	7/14/2019
Plaintiff's 15-day Rebuttal Period Ends	8/13/2019
Plaintiff's Opening Brief Due	10/12/2019
Defendant's Brief Due	11/11/2019
Plaintiff's Reply Brief Due	11/26/2019
Request for Oral Hearing (optional) Due	12/6/2019

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for

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submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).