

ESTTA Tracking number: **ESTTA635992**

Filing date: **10/30/2014**

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

Proceeding	91217941
Party	Plaintiff Robert Kirkman, LLC
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Date	10/30/2014
Attachments	F1554299.PDF(20543 bytes)

Walking Dead television series (the “Series”). The Series, now in its fourth season of production, is the most watched drama in cable television history. Kirkman owns numerous U.S. trademark registrations for THE WALKING DEAD Mark, including in International Classes 9, 16, and 41.

On December 2, 2013, Anna and Phillip Theodorou filed Application Serial No. 86/133,235 based on an intent to use the mark THE WALKING DEAD in connection with “T-shirts” in International Class 25.

On January 16, 2014, Anna and Phillip Theodorou filed Application Serial No. 86/166,802 based on an intent to use the mark THE WALKING DEAD in connection with “Restaurant services and themed restaurant services, namely, providing of food and beverages for consumption on and off the premises” in International Class 43.

On February 1, 2014, Anna and Phillip Theodorou filed Application Serial No. 86/181,789 based on an intent to use the mark THE WALKING DEAD in connection with “Coffee” in International Class 30.

On February 4, 2014, Anna and Phillip Theodorou filed Application Serial No. 86/183,334 based on an intent to use the mark THE WALKING DEAD in connection with “Bottled water” in International Class 32.

On May 2, 2014, Steven Theodorou and Jeffrey Heller (together with Anna and Phillip Theodorou, “Applicants”), filed Application Serial No. 86/270,745 based on an intent to use the mark THE WALKING DEAD in connection with “Cosmetic products, namely, lipsticks, lip gloss, lip liners, lip balms, eye shadows, eye lining pencils, liquid eye liners, eye makeup, mascara, eyebrow pencils, artificial eyelashes, blushers, bronzers, multi-use cosmetic sticks, foundation makeup, pressed powder, loose powder, makeup remover, concealers, eye make-up

palettes, lip gloss palettes, make-up sets, multi-use colored creams, powders and gels for use on face; nail polish, nail enamel, nail polish remover; non-medicated skin care products, namely, cleansers, exfoliators, toners, eye creams, cleansing wipes, moisturizing spritzers, tinted moisturizers; fragrances for personal use” in International Class 3.

On August 20, 2014, Kirkman filed a Notice of Opposition against Application Serial No. 86/166,802. That opposition proceeding was instituted as Opposition No. 91217941.

On August 25, 2014, Kirkman filed a Notice of Opposition against Application Serial Nos. 86/181,789 and 86/183,334. That opposition proceeding was instituted as Opposition No. 91217992.

On September 10, 2014, Kirkman filed a Notice of Opposition against Application Serial No. 86/133,235. That opposition proceeding was instituted as Opposition No. 91218267.

On October 3, 2014, Kirkman filed a Notice of Opposition against Application Serial No. 86/270,745. That opposition proceeding was instituted as Opposition No. 91218669.

In all of the opposition proceedings, Kirkman relies on its ownership of THE WALKING DEAD Mark and alleges that Applicants’ THE WALKING DEAD marks, when used on or in connection with the identified goods or services, are likely to cause confusion with Kirkman’s prior-used and registered THE WALKING DEAD Mark.

This motion seeks to consolidate Kirkman’s four proceedings against Applicants’ THE WALKING DEAD marks into a single proceeding based on the discovery and trial schedules set by the Board in connection with the last-instituted opposition proceeding, Opposition No. 91218669.

Prior to bringing this motion, Kirkman sought Applicants’ consent to consolidation during a discovery call on which all four Applicants were present. Applicants refused

Kirkman's request for consent, but did not offer any reasons why consolidation would be inappropriate.

ARGUMENT

Kirkman seeks consolidation of its four proceedings now pending against Applicants and their THE WALKING DEAD marks because the proceedings involve identical or related parties, identical marks, and common questions of law and fact. The Board may, in its discretion, consolidate pending cases in such circumstances. *See* Fed. R. Civ. P. 42(a); *see also Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 U.S.P.Q.2d 1154 (T.T.A.B. 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 that may be caused thereby." TBMP § 511.

Here, consolidating the four proceedings filed by Kirkman against Applicants' THE WALKING DEAD marks will save time, effort and expense and will not prejudice or inconvenience either the parties or the Board. First, each proceeding involves the same parties. While Anna and Phillip Theodorou filed Application Serial Nos. 86/133,235, 86/166,802, 86/181,789, and 86/183,334 and Steven Theodorou and Jeffrey Heller filed Application Serial No. 86/270,745, the four Applicants participated together on a discovery conference with Kirkman and presented themselves as identical parties. Moreover, Anna, Phillip, and Steven Theodorou share the same owner and correspondent mailing address, and the correspondent email address is the same for each of the proceedings.

Second, each proceeding involves identical issues of law and identical marks. In each opposition, Kirkman objects to registration of Applicants' THE WALKING DEAD marks on the grounds that (1) there is a likelihood of confusion between those marks and Kirkman's prior-

used and registered THE WALKING DEAD Mark and (2) that Applicants' THE WALKING DEAD marks are likely to dilute the fame and distinctiveness of Kirkman's THE WALKING DEAD Mark. Due to the identity of the parties and the underlying legal questions, consolidation will save time, effort and expense because it will obviate the need for either party to duplicate discovery, testimony or arguments in four separate proceedings. It also will obviate the need for the Board to consider the identical evidence, testimony and arguments in four separate proceedings. Thus, consolidation will save time, effort and expense.

Third, all four proceedings are still in their early stages. Therefore, resetting the dates in the earlier-instituted opposition proceedings to match those in Opposition No. 91218669 will not unduly delay the earlier proceedings or prejudice either Applicants or Kirkman.

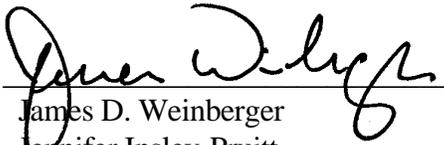
The fact that each of the various opposition proceedings involves applications to register THE WALKING DEAD in different International Classes is not a basis for denying consolidation. All of Applicants' involved goods and services are related to the products and services in connection with which Kirkman has long used its THE WALKING DEAD Mark. Thus, the different classes of goods at issue in the opposition proceedings should not unduly complicate a consolidated proceeding.

CONCLUSION

For the reasons stated above, Kirkman respectfully requests that the Board grant its motion to consolidate Kirkman's four proceedings currently pending against Applicants and their THE WALKING DEAD marks: Opposition Nos. 91217941, 91217992, 91218267, and 91218669. Kirkman also respectfully requests that the Board set the schedule for the consolidated proceedings to match that of the last-instituted opposition proceeding.

Dated: New York, New York
October 30, 2014

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSER'S MOTION TO CONSOLIDATE PROCEEDINGS was sent by first class mail postage pre-paid to Applicants' Correspondents of Record, this 30th day of October 2014, as follows:

in connection with Opposition Nos. 91217992 and 91218267, to

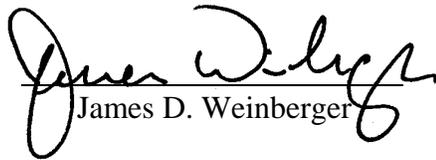
ANNA THEODOROU
446 EWINGVILLE RD
EWING, NJ 08638-1539

and in connection with Opposition No. 91217941, to

PHILLIP THEODOROU
446 EWINGVILLE RD
EWING, NJ 08638-1539

and in connection with Opposition No. 91218669, to

STEVEN THEODOROU
446 EWINGVILLE RD
EWING, NJ 08638-1539.


James D. Weinberger