

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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June 28, 2019

Opposition No. 91218720(Parent)
Cancellation No. 92071398

Affordable Naturals, LLC

v.

NutraMarks, Inc.

Karl Kochersperger, Paralegal Specialist:

On June 20, 2019, Opposer/Petitioner filed a motion to consolidate Opposition No. 91218720 and Cancellation No. 92071398. The Board notes initially that Respondent has not yet filed its answer in each proceeding for which consolidation is sought.

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).

The parties to these proceedings are identical, and the issues are similar or related. Accordingly, the motion to consolidate is granted. Opposition No. 91218720 and Cancellation No. 92071398 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 will be maintained in Opposition No. **91218720** as the “parent case.” From this point on, only a single copy of all motions and submissions should be filed, and each submission should be filed in the parent case only, but caption all consolidated proceeding numbers, listing and identifying the parent case first. However, inasmuch as these proceedings are being consolidated prior to joinder of the issues in each proceeding, Respondent should file a separate answer in the cancellation proceeding before commencing the practice of filing a single copy of all submissions in the parent case.¹ Each answer must be filed through ESTTA, the Board’s Electronic System for Trademark Trials and Appeals. *See Trademark Rules 2.106(b)(1) and 2.114(b)(1)*.

¹ 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.

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.

Upon consolidation, the Board will reset dates for the consolidated proceeding, usually by adopting the dates as set in the most recently instituted of the cases being consolidated. Answer, discovery, conferencing, disclosure and trial dates are reset as set forth below.

Time to Answer in Cancellation No. 92071398	7/9/2019
Deadline for Discovery Conference	8/8/2019
Discovery Opens	8/8/2019
Initial Disclosures Due	9/7/2019
Expert Disclosures Due	1/5/2020
Discovery Closes	2/4/2020
Plaintiff's Pretrial Disclosures Due	3/20/2020
Plaintiff's 30-day Trial Period Ends	5/4/2020
Defendant's Pretrial Disclosures Due	5/19/2020
Defendant's 30-day Trial Period Ends	7/3/2020
Plaintiff's Rebuttal Disclosures Due	7/18/2020
Plaintiff's 15-day Rebuttal Period Ends	8/17/2020
Plaintiff's Opening Brief Due	10/16/2020
Defendant's Brief Due	11/15/2020
Plaintiff's Reply Brief Due	11/30/2020
Request for Oral Hearing (optional) Due	12/10/2020

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, matters in evidence, the manner and timing of taking testimony, and the procedures for

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).