

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

JMW/mbm

Mailed: February 13, 2017

Opposition No. 91209039 (**Parent**)

Boyd Gaming Corporation

v.

B Hotel Group, LLC

Opposition Nos. 91227967, 91227968,
91227970, 91227971, 91227972, 91227973,
91228065, 91228066, 91228067, 91228068,
91228069, 91228070, 91228071, 91228072,
91228073, 91228074, 91228075, 91228076,
91228077

B Hotel Group, LLC

v.

Boyd Gaming Corporation

Mary Beth Myles,
Interlocutory Attorney:

It has come to the Board's attention that the above-captioned opposition proceedings involve common questions of law and fact and the parties are the same. 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); *See also Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991); TBMP § 511 (2017).

Opposition Nos. 91209039 (Parent), 91227967, 91227968, 91227970, 91227971, 91227972, 91227973, 91228065, 91228066, 91228067, 91228068, 91228069, 91228070, 91228071, 91228072, 91228073, 91228074, 91228075, 91228076, 91228077

In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense that may be gained from consolidation, against any prejudice or inconvenience that 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).

It is noted that the applicant has filed its answer in each proceeding involved in this consolidation, the parties to these proceedings are identical, and the issues are similar or related. The Board *sua sponte* finds that consolidation of the above referenced proceedings is appropriate. Consolidation will avoid duplication of effort concerning the factual issues and will thereby avoid unnecessary costs and delays.

Accordingly, Opposition No. 91209039 (**Parent**) and Opposition Nos. 91227967, 91227968, 91227970, 91227971, 91227972, 91227973, 91228065, 91228066, 91228067, 91228068, 91228069, 91228070, 91228071, 91228072, 91228073, 91228074, 91228075, 91228076, and 91228077 (collectively, "Child Cases") 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. **91209039** as the "**parent**" case. From this point on, only a single copy of all motions and papers should be filed,

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and each such motion or paper should be filed in the “**parent**” case only, but caption all consolidated proceeding numbers, listing the “**parent**” case first.¹

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. The Board notes that in this case, however, discovery has closed in the parent case, Opposition No. 91209039, and that the next deadline in Opposition No. 91209039 is pretrial disclosures. Discovery remains open in the Child Cases and the next deadline is initial disclosures in each of those proceedings. In view thereof, Opposition No. 91209039 will remain *suspended* until Boyd Gaming Corporation’s deadline to file its pretrial disclosures, as set forth below. At that time, these consolidated proceedings will all move contemporaneously according to the schedule provided below.

The parties have also filed consented motions in each of the child cases consolidated herein to maintain suspension of the proceedings for an additional thirty

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.

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days so that the parties may continue their settlement negotiations in each of these consolidated proceedings.² The motions are **GRANTED** to the extent noted below.

These now consolidated proceedings remain suspended for settlement up to, and including, **March 2, 2017**, subject to the right of either party to request resumption at any time. *See* Trademark Rule 2.117(c).

In the event that there is no word from either party concerning the progress of their negotiations, upon conclusion of the suspension period, these consolidated proceedings (except for the parent case, i.e., Opposition No. 91209039, which shall remain suspended until the deadline for Boyd Gaming Corporation's pretrial disclosures, as provided below) shall resume without further notice or order from the Board, upon the schedule set out below.

Proceedings resume:

March 3, 2017

Initial Disclosures Due for Child Cases	March 23, 2017
Expert Disclosures Due for Child Cases	July 21, 2017
Discovery Closes for Child Cases ³	August 20, 2017
Boyd Gaming Corp.'s Pretrial Disclosures, as plaintiff in Opposition No. 91209039	October 4, 2017
30-day testimony period for Boyd Gaming Corp., as plaintiff in Opposition No. 91209039 to close	November 18, 2017

² The Board notes that it already has granted the consented motion to suspend for settlement in the parent case, i.e., Opposition No. 91209039. *See* 32 and 33 TTABVUE in Opposition No. 91209039.

³ Inasmuch as discovery has already closed in Opposition No. 91209039, the parties are **precluded** from propounding any further discovery solely related to the issues subject to this particular opposition proceeding.

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B Hotel Group, LLC's Pretrial Disclosures	December 3, 2017
30-day testimony period for B Hotel Group, LLC, as defendant in Opposition No. 91209039 and plaintiff in the Child Cases to close	January 17, 2018
Boyd Gaming Corp.'s Rebuttal Disclosures Due	February 1, 2018
30-day testimony period for Boyd Gaming Corp., as defendant in Child Cases, and rebuttal testimony, as plaintiff in Opposition No. 91209039, to close	March 18, 2018
B Hotel Group, LLC's Rebuttal Disclosures Due	April 2, 2018
15-day rebuttal period for B Hotel Group, LLC, as plaintiff in the Child Cases to close	May 2, 2018
Brief for Boyd Gaming Corp., as plaintiff in Opposition No. 91209039 due	July 1, 2018
Brief for B Hotel Group, LLC, as defendant in Opposition No. 91209039 and as plaintiff in the Child Cases due	July 31, 2018
Brief for Boyd Gaming Corp., as defendant in the Child Cases, and reply brief, if any, as plaintiff in Opposition No. 91209039, due	August 30, 2018
Reply brief, if any, for B Hotel Group, LLC, as plaintiff in the Child Cases due	September 14, 2018

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

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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).

If, during the suspension period, either of the parties or their attorneys should have a change of address, the Board should be so informed.

Settlement Status Report Requirement

As a final matter, the Board notes that in each of these consolidated proceedings, the parties have effected numerous stipulations to extend trial dates and to suspend this proceeding to accommodate the parties' settlement negotiations, yet settlement has still not been reached. Accordingly, if the parties agree to another extension or suspension for settlement, they will be expected to report to the Board on the progress of their settlement negotiations. Such report **must** include: (1) a recitation of issues that have been resolved; (2) identification of the settlement activities that have occurred each month since December 2015,⁴ including (i) all dates on which the

⁴ Since December 2015, the parties have affected numerous requests to extend or suspend for settlement in parent case, i.e., Opposition No. 91209039.

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parties communicated, and the method of each communication⁵ (e.g., telephone, email, in person meeting), and (ii) the general nature of each communication; (3) issues that remain to be resolved; and (4) a firm timetable for resolution. Absent such a report, any future motion to extend or suspend, even though agreed to by the parties, **will not be granted**.

To the extent the parties do file another request to extend or suspend for settlement, the parties are ***precluded*** from employing the “consented motions” filing option in ESTTA; instead, the parties must utilize the “general forms” filing option and include a proposed trial schedule with their request.

NOTICE: CHANGES TO THE TRADEMARK TRIAL AND APPEAL BOARD (“BOARD”) RULES OF PRACTICE EFFECTIVE JANUARY 14, 2017

The USPTO published a Notice of Final Rulemaking in the Federal Register on October 7 2016, at 81 Fed. Reg. 69950. It sets forth **several** amendments to the rules that govern *inter partes* (oppositions, cancellations, concurrent use) and ex parte appeal proceedings. A correction to the final rule was published on December 12, 2016, at 81 Fed. Reg. 89382.

For complete information, the parties are referred to:

- The Board’s home page on the uspto.gov website:
<http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>
- The final rule: <http://www.uspto.gov/sites/default/files/documents/81%20FR%2069950.pdf>
- The correction to the final rule:
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2089382.pdf>

⁵ If no settlement activity has occurred for any month since December 2015, the parties must explain why no settlement activity occurred.

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- A chart summarizing the affected rules and changes:
http://www.uspto.gov/sites/default/files/documents/RulesChart_12_9_16.pdf

For **all** proceedings, including those **already in progress on January 14, 2017**, some of the changes are:

- All pleadings and submissions must be filed through ESTTA. Trademark Rules 2.101, 2.102, 2.106, 2.111, 2.114, 2.121, 2.123, 2.126, 2.190 and 2.191.
- Service of all papers must be made by email, unless otherwise stipulated. Trademark Rule 2.119.
- Response periods are no longer extended by five days for service by first-class mail, Priority Mail Express®, or overnight courier. Trademark Rule 2.119.
- Deadlines for submissions to the Board that are initiated by a date of service are 20 days. Trademark Rule 2.119. Responses to motions for summary judgment remain 30 days. Similarly, deadlines for responses to discovery requests remain 30 days.
- All discovery requests must be served early enough to allow for responses prior to the close of discovery. Trademark Rule 2.120. Duty to supplement discovery responses will continue after the close of discovery.
- Motions to compel initial disclosures must be filed within 30 days after the deadline for serving initial disclosures. Trademark Rule 2.120.
- Motions to compel discovery, motions to test the sufficiency of responses or objections, and motions for summary judgment must be filed prior to the first pretrial disclosure deadline. Trademark Rules 2.120 and 2.127.
- Requests for production and requests for admission, as well as interrogatories, are each limited to 75. Trademark Rule 2.120.
- Testimony may be submitted in the form of an affidavit or declaration. Trademark Rules 2.121, 2.123 and 2.125.
- New requirements for the submission of trial evidence and deposition transcripts. Trademark Rules 2.122, 2.123, and 2.125.
- For proceedings **filed on or after January 14, 2017**, in addition to the changes set forth above, the Board's notice of institution constitutes service of complaints. Trademark Rules 2.105(a) and 2.113(a).

This is only a summary of the significant content of the Final Rule. All parties involved in or contemplating filing a Board proceeding, regardless of the date of commencement of the proceeding, should read the entire Final Rule.