

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

CME

Mailed: February 24, 2017

Opposition No. 91232737 (parent)
Cancellation No. 92065478

Slumberland, Inc.

v.

Mattress Firm, Inc.

Christen M. English, Interlocutory Attorney:

It has come to the Board's attention that the parties to Opposition No. 91232737 also are parties to Cancellation No. 92065478 involving related marks. When cases involving common questions of law and fact are pending before the Board, the Board may order consolidation of the cases. *See* Fed. R. Civ. P. 42(a); TBMP § 511 (Jan. 2017). Inasmuch as the parties to Opposition No. 91232737 and Cancellation No. 92065478 are the same and the proceedings involve common questions of law and fact, the Board, on its own initiative, consolidates the proceedings.¹ *Venture Out Properties LLC v. Wynn Resorts Holdings LLC*, 81 USPQ2d 1887, 1889 (TTAB 2007).

The proceedings may be presented on the same record and briefs. *Hilson Research Inc. v. Soc'y for Human Res. Mgmt.*, 27 USPQ2d 1423, 1424, n.1 (TTAB 1993); *Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1619, n.1

¹ In view thereof, Slumberland Inc.'s motion to consolidate, attached to its petition to cancel, is moot.

(TTAB 1989). The record will be maintained in Opposition No. 91232737 as the “parent” case. Mattress Firm, Inc. should file a separate answer in each proceeding by the deadlines set forth below. The parties should file all other submissions in the parent case only. Each submission should bear the case caption set forth above and the parent case should be designated as such by following the case number with “(parent).”

Consolidated cases do not lose their separate identity because of consolidation. Each proceeding retains its separate character and requires entry of a separate judgment. *Dating DNA LLC v. Imagini Holdings Ltd.*, 94 USPQ2d 1889, 1893 (TTAB 2010). The single decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings and a copy of the final decision shall be placed in each proceeding file. *Id.*

Dates in the consolidated proceedings are as follows:

Time to Answer Notice of Opposition	3/19/2017
Time to Answer Petition to Cancel	4/5/2017
Deadline for Discovery Conference	5/5/2017
Discovery Opens	5/5/2017
Initial Disclosures Due	6/4/2017
Expert Disclosures Due	10/2/2017
Discovery Closes	11/1/2017
Plaintiff's Pretrial Disclosures Due	12/16/2017
Plaintiff's 30-day Trial Period Ends	1/30/2018
Defendant's Pretrial Disclosures Due	2/14/2018
Defendant's 30-day Trial Period Ends	3/31/2018
Plaintiff's Rebuttal Disclosures Due	4/15/2018
Plaintiff's 15-day Rebuttal Period Ends	5/15/2018
Plaintiff's Opening Brief Due	7/14/2018
Defendant's Brief Due	8/13/2018
Plaintiff's Reply Brief Due	8/28/2018

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 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 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).
