

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

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Mailed: April 9, 2018

Opposition No. 91235078 (**Parent**)  
Opposition No. 91235080

*ConSeal International Incorporated*

*v.*

*OMS Investments, Inc.*

Mary Beth Myles,  
Interlocutory Attorney:

#### **I. Sua Sponte Consolidation**

It has come to the Board's attention that the above-captioned proceedings involve common questions of law and fact and that the parties are the same. When cases involving common questions of law or fact are pending before the Board, the Board may order the 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).

Accordingly, the Board sua sponte orders the consolidation of the above-captioned proceedings.

In view thereof, Opposition No. 91235078 and Opposition No. 91235080 are hereby consolidated.

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The consolidated cases may be presented on the same record and briefs. *See Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989) and *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993).

The Board filed for these consolidated cases will be maintained in Opposition No. 91235078 as the “parent” case. As a general rule, from this point on only a single copy of any paper or motion should be filed in the parent case of the consolidated proceedings, but that copy should bear both proceeding numbers in its caption.

The parties are further advised that 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 pleadings and a copy of the final decision shall be placed in each proceeding file.<sup>1</sup>

**II. Motion to Substitute**

On December 7, 2017, Applicant filed a motion to substitute OMS Investments, Inc. as the Applicant in each of the above-captioned proceedings.<sup>2</sup> Opposer did not file a response thereto. *See* Trademark Rule 2.127(a). Accordingly, the motion to substitute is **granted** as conceded and OMS Investments, Inc. is hereby substituted as Applicant in each of the above-captioned proceedings.

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<sup>1</sup> The parties should promptly inform the Board in writing of any other related inter partes proceedings. *See* Fed. R. Civ. P. 42(a).

<sup>2</sup> Assignment recorded at Reel/Frame 6212/0036.

**III. Schedule**

Upon consolidation, in accordance with Board practice, discovery, disclosure and trial dates are reset to conform to the dates latest set in the proceedings that are being consolidated. In this instance, both proceedings, as last reset, were proceeding on the same schedule. Accordingly, dates remain as set by the Board's January 18, 2018 order, as follows:

Expert Disclosures Due	<b>4/25/2018</b>
Discovery Closes	<b>5/25/2018</b>
Plaintiff's Pretrial Disclosures Due	<b>7/9/2018</b>
Plaintiff's 30-day Trial Period Ends	<b>8/23/2018</b>
Defendant's Pretrial Disclosures Due	<b>9/7/2018</b>
Defendant's 30-day Trial Period Ends	<b>10/22/2018</b>
Plaintiff's Rebuttal Disclosures Due	<b>11/6/2018</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>12/6/2018</b>
Plaintiff's Opening Brief Due	<b>2/4/2019</b>
Defendant's Brief Due	<b>3/6/2019</b>
Plaintiff's Reply Brief Due	<b>3/21/2019</b>

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

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final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).