UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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EJW

October 31, 2018

Opposition No. 91242213 (parent)
Opposition No. 91242238

AUDEMARS PIGUET HOLDING S.A.

v.

Haas Outdoors, Inc.

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

These cases now come up for consideration of Applicant's fully briefed motions (filed September 11, 2018 in each proceeding) to consolidate Opposition Nos. 91242213 and 91242238, which are pending between the parties.

Applicant requests that the Board consolidate the above-referenced proceedings on the ground that the parties are the same, the proceedings involve common issues of law and fact, and counsel for both parties are the same in both proceedings. Applicant points out specifically that both proceedings will address whether there is likelihood of confusion between its MOSSY OAK and MOSSY OAK (and design) marks with Opposer's pleaded ROYAL OAK marks. Further, Applicant contends that the parties' and the Board's efforts would be duplicated if the proceedings are not consolidated.

Opposer argues against consolidation, asserting that the marks are different in each proceeding insofar as Applicant's mark in Opposition No. 91242238 is a design mark, and Opposition No. 91242213 involves a word mark. Opposer also suggests that by keeping the proceedings separate, each of the involved marks will receive adequate consideration.

In reply, Applicant points out that the wording in each of its applied-for marks, MOSSY OAK, is the same in both applications, and reiterates that conducting two separate oppositions would be a waste of resources.

Legal Standard and Order

When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. 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. 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 Wise F&I, LLC v. Allstate Ins. Co.*, 120 USPQ2d 1103, 1105 (TTAB 2016) (consolidation is discretionary with the Board and may be ordered *sua sponte*); *M.C.I. Foods Inc. v. Bunte,* 86 USPQ2d 1044, 1046 (TTAB 2008) (proceeding involved identical parties, identical registrations and related issues); *S. Industries Inc. v. Lamb-Weston Inc.,* 45 USPQ2d 1293, 1297 (TTAB 1997) (both proceedings involved the same mark and

virtually identical pleadings); *see also* 9A Wright & Miller, Fed. Prac. & Proc. Civ. § 2383 (3d ed. September 2018 update).

Here, the parties are the same in each proceeding, the applied-for marks are comprised in whole or in part of the wording "MOSSY OAK," Applicant's goods are identical in each application, Opposer has pleaded the same trademark registrations in each proceeding, and the claims asserted by Opposer in each case are identical, namely, likelihood of confusion and dilution.[1] For these reasons, the parties' time, effort, and expense, as well as the resources of the Board will be saved by consolidation. In view thereof, Applicant's motions to consolidate filed separately in each proceeding are **GRANTED**.

Accordingly, the above-noted opposition proceedings are hereby **CONSOLIDATED** and may be presented on the same record and briefs. The Board file will be maintained in **Opposition No. 91242213** as the "parent" case. In addition, the parties should no longer file separate papers in connection with each proceeding. Only a single copy of each paper should be filed by the parties and each paper should bear the case caption as set forth above.[2]

The parties are reminded that consolidated cases do not lose their separate identity because of consolidation. Each proceeding retains its separate character and requires entry of a separate judgment. The decision on the consolidated cases shall

[1] The Board also notes that issue has been joined in these proceedings.

[2] The parties should promptly inform the Board in writing of any other related *inter partes* proceedings. *See* Fed. R. Civ. P. 42(a).

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. *See* Wright & Miller, 9A Fed. Prac. & Proc. Civ. § 2382.

With respect to the trial schedule, it is the Board's practice to reset the trial dates for consolidated proceedings in accordance with the most recently instituted of the consolidated cases. Accordingly, the current trial schedule for Opposition No. 91242238 shall now apply to this consolidated proceeding. For the parties' convenience, the reset trial schedule is set forth below.

Expert Disclosures Due	**2/11/2019**
Discovery Closes	**3/13/2019**
Plaintiff's Pretrial Disclosures Due	**4/27/2019**
Plaintiff's 30-day Trial Period Ends	**6/11/2019**
Defendant's Pretrial Disclosures Due	**6/26/2019**
Defendant's 30-day Trial Period Ends	**8/10/2019**
Plaintiff's Rebuttal Disclosures Due	**8/25/2019**
Plaintiff's 15-day Rebuttal Period Ends	**9/24/2019**
Plaintiff's Opening Brief Due	**11/23/2019**
Defendant's Brief Due	**12/23/2019**
Plaintiff's Reply Brief Due	**1/7/2020**
Request for Oral Hearing (optional) Due	**1/17/2020**

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, 37 C.F.R. §§ 2.121-2.125. 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), 37 C.F.R. §§ 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), 37 C.F.R. § 2.129(a).

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