

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  
General Email: [TTABInfo@uspto.gov](mailto:TTABInfo@uspto.gov)

mbm/jmw

August 29, 2019

Opposition No. 91242576 (**Parent**)

Opposition No. 91242577

*FremantleMedia North America, Inc.*

*v.*

*CJ E&M Corporation*

**Mary Beth Myles, Interlocutory Attorney:**

**Sua Sponte Consolidation**

It has come to the Board's attention that the parties are both party to the above captioned proceedings. 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

Opposition Nos. 91242576 and 91242577

upon the Board's own initiative. *See, e.g., Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993).

The parties to these proceedings are identical, and the issues are similar or related. Accordingly, the Board sua sponte orders their consolidation. Opposition Nos. 91242576 and 91242577 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. **91242576** 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.<sup>1</sup>

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. Trial dates are reset accordingly at the end of this order.

---

<sup>1</sup> 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.

**Opposer's Motions to Compel**

On May 30, 2019, Opposer filed a motion to compel discovery in each of these consolidated proceedings. Applicant did not file a brief in response thereto within the time provided under Trademark Rule 2.127(a).

Opposer seeks orders directing Applicant's responses to Opposer's interrogatories and requests for production of documents to Opposer and Applicant's production of documents responsive thereto.

The motions to compel discovery are hereby granted as conceded. *See* Trademark Rule 2.127(a); TBMP § 502.04.

A party that fails to respond to interrogatories or document requests during the time allowed therefor, and that is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery request on its merits. *See No Fear Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000); TBMP § 403.03.

Accordingly, Applicant is directed to serve, within 30 days of the date of this order, responses to Opposer's first set of interrogatories and first of document requests in each of these consolidated proceedings. Applicant must respond in full and without objection on the merits thereof inasmuch as Applicant failed either to timely respond or to object to said discovery requests. *Id.* Additionally, Applicant is allowed until thirty days from the date of this order in which to copy and produce non-privileged documents responsive to Opposer's first set of documents requests in each of these

consolidated proceedings and organize and label, by Bates stamp number, the documents responsive to each of the requests.<sup>2</sup>

If there are no responsive, non-privileged documents in Applicant's possession, custody or control that are responsive to any of the above-identified document requests, Applicant must so state affirmatively in its response to the corresponding document request.

Additionally, Applicant is required to provide Opposer a privilege log within the same thirty days provided above to the extent that Applicant claims privilege to any of Opposer's written discovery requests, if it has not already done so.<sup>3</sup>

In the event Applicant fails to provide Opposer with full and complete responses to the outstanding discovery, as required by this order, Applicant may be barred from relying upon or later producing documents or facts at trial withheld from such discovery.<sup>4</sup> *See* Fed. R. Civ. P. 37(c)(1).

These consolidated proceedings are resumed. Discovery, disclosure, and trial dates are reset as indicated below:

Expert Disclosures Due	<b>9/28/2019</b>
Discovery Closes	<b>10/28/2019</b>

---

<sup>2</sup> To the extent the production of documents to any of the document requests identified above is voluminous in nature, Applicant may produce a representative sampling of documents responsive to the corresponding document request. Such representative sampling, however, must be sufficient to meet Opposer's discovery needs.

<sup>3</sup> The Board expects the parties and their attorneys to cooperate with one another in the discovery process and looks with extreme disfavor on those who do not. TBMP § 408. Each party and its attorney have a duty to make a good faith effort to satisfy the discovery needs of its adversary. *Id.*

<sup>4</sup> If Petitioner fails to comply with this order, Respondent's remedy lies in a motion for sanctions, pursuant to Trademark Rule 2.120(h)(1). Furthermore, the parties are reminded that a party that has responded to a discovery request has a duty to supplement or correct that response. *See* Fed. R. Civ. P. 26(e).

Plaintiff's Pretrial Disclosures Due	<b>12/12/2019</b>
Plaintiff's 30-day Trial Period Ends	<b>1/26/2020</b>
Defendant's Pretrial Disclosures Due	<b>2/10/2020</b>
Defendant's 30-day Trial Period Ends	<b>3/26/2020</b>
Plaintiff's Rebuttal Disclosures Due	<b>4/10/2020</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>5/10/2020</b>
Plaintiff's Opening Brief Due	<b>7/9/2020</b>
Defendant's Brief Due	<b>8/8/2020</b>
Plaintiff's Reply Brief Due	<b>8/23/2020</b>
Request for Oral Hearing (optional) Due	<b>9/2/2020</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, 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).