

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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LTS/dav

July 11, 2019

Opposition No. 91243966 (parent case)

Opposition No. 91246046 (child case)

*Jantzen Brands Corporation*

*v.*

*Hmptn Water LLC*

**Lawrence T. Stanley, Jr., Interlocutory Attorney:**

**Motion to Substitute in Opposition No. 91246046**

On March 8, 2019, Opposer filed a motion to substitute Jantzen Brands Corporation as the party plaintiff in Opposition No. 91246046. In support of its motion to substitute, Opposer provided a copy of the assignments assigning the pleaded registrations to Jantzen Brands Corporation, which were recorded with the USPTO Assignment Branch at Reel/Frame 6582/0219 and Reel/Frame 6551/0732.

Inasmuch as Applicant has not objected to Opposer's motion for substitution, Opposer's motion is granted as **conceded**, and Jantzen Brands Corporation is hereby **substituted** as the party plaintiff in Opposition No. 91246046. *See* Trademark Rule 2.127(a).<sup>1</sup>

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<sup>1</sup> On April 24, 2019, Jantzen Brands Corporation was substituted as the party plaintiff in Opposition No. 91243966. 6 TTABVUE.

**Motion to Consolidate**

On June 6, 2019, Opposer filed a motion to consolidate Opposition No. 91243966 with Opposition No. 91246046. The Board notes initially that Applicant has filed its answer in each proceeding for which consolidation is sought.

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 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 motion to consolidate is **granted**. Opposition No. 91243966 and Opposition No. 91246046 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. 91243966 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>2</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 as set forth below.

Expert Disclosures Due	9/1/2019
Discovery Closes	10/1/2019
Plaintiff's Pretrial Disclosures Due	11/15/2019
Plaintiff's 30-day Trial Period Ends	12/30/2019
Defendant's Pretrial Disclosures Due	1/14/2020
Defendant's 30-day Trial Period Ends	2/28/2020
Plaintiff's Rebuttal Disclosures Due	3/14/2020
Plaintiff's 15-day Rebuttal Period Ends	4/13/2020
Plaintiff's Opening Brief Due	6/12/2020
Defendant's Brief Due	7/12/2020
Plaintiff's Reply Brief Due	7/27/2020
Request for Oral Hearing (optional) Due	8/6/2020

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

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<sup>2</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.

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).