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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91246457
Party	Plaintiff Domenic Esposito
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Attachments	4.22.20 Motion to Consolidate and For Extension.pdf(14640 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Domenic Esposito,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91249046
	:	
The Spoon Movement, LLC,	:	
	:	
Applicant.	:	

U.S. Trademark Application Serial No. 88258491
Mark: Spoon Design

**OPPOSER’S MOTION TO CONSOLIDATE AND FOR 90-DAY EXTENSION OF
DISCOVERY PERIOD**

Opposer Domenic Esposito ("Opposer" or "Esposito"), moves pursuant to Rule 42(a) of the Federal Rules of Civil Procedure ("FRCP"), Trademark Rule 2.104(b), and § 511 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") to consolidate Opposition No. 91249046 with pending Opposition No. 91246457 (collectively, the "Proceedings"). Opposer further moves, pursuant to FRCP 6(b), Trademark Rule 2.127(b), and § 509.01(a), for a 90-day extension of time in which to take discovery in this matter. In support of its request for consolidation, Opposer states as follows:

1. Where, as here, the proceedings involve common questions of law or fact, the Board is empowered to consolidate the proceedings. *See* TBMP § 511; FRCP 42(a). In deciding whether to order consolidation, the Board will weigh the benefits of

consolidation - savings in time, effort, and expense - against potential prejudice or inconvenience to the parties. *See* TBMP § 511.

2. The Proceedings involve the same parties, namely Esposito and Applicant The Spoon Movement, LLC ("Applicant"). Each of the parties is represented by the same respective counsel in the Proceedings.
3. Each of the Proceedings involve Applicant's applications for a nearly identical mark, a spoon design. Opposition No. 91246457 involves Applicant's application for the spoon design plus words under Section 1(a) of the Trademark Act, 15 U.S.C. § 105 1(a), in association with Class 035 services, and Opposition No. 91249046 involves Applicant's application for the spoon design under Section 1(b) of the Trademark Act, 15 U.S.C. § 105 1(b), in association with Class 014 goods.
4. Common questions of law and fact are presented in each of the Proceedings. See *Wisconsin Cheese Group, LL C v. Comercializadora de Lacteos y Derivados S.A. de C.V.*, 118 U.S.P.Q.2d 1262, 1264 (T.T.A.B. 2016) (motion to consolidate granted based on common questions of law and fact).
5. In each of the Proceedings, Opposer has opposed both of Applicant's applications for the spoon design by asserting the same claims (i.e., Applicant's failure of ownership, priority and likelihood of confusion) and the same rights based on Opposer's prior use. Applicant has filed substantially similar answers and has not asserted defenses in either of the Proceedings. See *S. Industries Inc. v. Lamb-Weston Inc.*, 45 U.S.P.Q.2d 1293, 1297 (T.T.A.B.1997) (granting motion to consolidate where both proceedings involved the same mark and virtually identical pleadings).

6. Because the same parties, same mark, and same rights and claims are involved in both Proceedings, and the Proceedings involve common issues of law and fact, consolidation will result in considerable savings in time, effort and expense.
7. Furthermore, consolidation will also avoid any confusion concerning varying deadlines and it will not result in any prejudice or inconvenience to any party. To the extent that the tracking orders in the Proceedings are separated by approximately 60 days, consolidation will not materially delay the earlier-filed proceeding.

In support of its request for a 90-day extension of time in which to take discovery in this matter, Opposer states as follows:

8. On March 10, 2020, in response to the novel coronavirus (“COVID-19”) pandemic, the Commonwealth of Massachusetts declared a state of emergency.
9. On March 13, 2020, the President of the United States issued a national emergency concerning COVID-19.
10. Effective at close of business on Friday, March 13, 2020, counsel for Opposer instituted a mandatory remote work protocol for all employees and attorneys that initially extended through March 29, 2020, and which has since been extended indefinitely.
11. On March 23, 2020, the Commonwealth of Massachusetts issued COVID-19 Order No. 13 mandating the temporary closure of brick and mortar premises for businesses and organizations that are not deemed COVID-19 Essential Services, through April 7, 2020 (the “Massachusetts Closure Order”).
12. On March 31, 2020, the Commonwealth of Massachusetts issued COVID-19 Order No. 21, extending the Massachusetts Closure Order through May 4, 2020.

13. No state or federal authority is currently able to predict with certainty when the foregoing conditions will abate.
14. As a result of the foregoing, Opposer and counsel have been delayed and expect to continue to be delayed in their communications and activities with respect to the Proceedings. Despite these circumstances, Counsel for Opposer has been making diligent efforts to confer with Opposer and move the Proceedings forward.
15. In light of the foregoing, Opposer submits that good cause exists for the requested extension of time. Therefore, Opposer respectfully requests that the trial dates be reset as follows:

Event	Current Due Date	Requested Due Date
Discovery Closes	4/29/20	7/28/20
Plaintiff's Pretrial Disclosures Due	6/13/20	9/11/20
Plaintiff's 30-day Trial Period Ends	7/28/20	10/26/20
Defendant's Pretrial Disclosures Due	8/12/20	11/10/20
Defendant's 30-day Trial Period Ends	9/26/20	12/28/20
Plaintiff's Rebuttal Disclosures Due	10/11/20	1/9/21
Plaintiff's 15-day Rebuttal Period Ends	11/10/20	2/8/21
Plaintiff's Opening Brief Due	1/9/21	4/9/21
Defendant's Brief Due	2/8/21	5/9/21
Plaintiff's Reply Brief Due	2/23/21	5/24/21
Request for Oral Hearing (optional) Due	3/5/21	6/3/21

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Respectfully submitted,
Domenic Esposito
By his attorney,

/s/ Julie R. Bryan
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Dated: April 22, 2020

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon all counsel of record by email and first class mail, postage pre-paid on April 22, 2020.

/s/ Steven M. Ayr
Steven M. Ayr

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