

UNITED STATES PATENT AND TRADEMARK OFFICE  
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mbm/VV

March 9, 2020

Opposition No. 91248100 (**Parent**)  
Opposition No. 91248176

*SpinMedia LLC*

*v.*

*Universal International Music B.V.*

**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 the parties are the same. 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); *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 Nos. 91248100 and 91248176 are hereby consolidated.

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 file for these consolidated cases will be maintained in Opposition No. 91248100 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 all 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>

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.

## **II. Motion to Substitute Party Plaintiff**

On February 18 and 25, 2020, Opposer filed with the Board papers captioned as “[r]evocation, appointment and change of address of attorney,” in Opposition No. 91248100 and 91248176, respectively 15 TTABVUE.<sup>2</sup> The Board construes these filings as Opposer’s motion to join Spin Digital Media, LLC as party Plaintiff in these 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> Unless otherwise noted, docket entry numbers refer to TTABVUE entries in the parent proceeding.

If a mark pleaded by a plaintiff is assigned and a copy of the assignment is filed with the Board, the assignee ordinarily will be substituted for the originally named party if the assignment occurred prior to the commencement of the proceeding, if the discovery and testimony periods have closed, if the assignor is no longer in existence, or if the defendant raises no objection to substitution. TBMP § 512.01 (2019).

Here, Opposer assigned its pleaded registrations and applications to Spin Digital Media, LLC on January 15, 2020, after these proceedings were instituted. This change was recorded with the Assignment Recordation Branch of the Office on January 29, 2020 (Reel/Frame 6850/0168).

In view of the foregoing, Spin Digital Media, LLC is joined as party plaintiff in each of these consolidated proceedings. The caption of this proceeding is hereby amended to reflect that assignee, Spin Digital Media, LLC has joined as a party plaintiff in these proceedings.

Opposer's notice of appearance of counsel filed in conjunction with the present paper is noted and made of record.

**III. Motion to Suspend in Opposition No. 91248100 and Schedule in These Consolidated Proceedings**

Applicant's consented motion, filed February 21, 2020 in Opposition No. 91248100, to suspend this proceeding for 60 days is granted, as modified.<sup>3</sup>

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<sup>3</sup> Applicant's proposed trial schedule includes extension of discovery conference. On February 18, 2020, the Board denied Applicant's consented motion, filed January 23, 2020, to extend deadlines and the deadline for the discovery conference has closed. The consented motion to

Because the parties are negotiating for a possible settlement of this case, proceedings are suspended, subject to the right of either party to request resumption at any time.<sup>4</sup> *See* Trademark Rules 2.117(c) and 2.127(a); and TBMP § 605.02.

If, during the suspension period, either of the parties or their attorneys have a change of address or email address, the Board should be so informed. *See* Trademark Rule 2.18(b)(1).

In the event that there is no word from either party concerning the progress of their negotiations, upon conclusion of the suspension period, **proceedings shall resume without further notice or order from the Board**, in accordance with the schedule as set forth below.

In Opposition No. 91248176, Applicant has not yet filed its answer. Accordingly, dates are reset as follows in these consolidated proceedings. Applicant should file its answer to the notice of opposition separately in Opposition No. 91248176 as an exception to the general rule that all filings be made in the parent case only.

**Proceedings Resume: 3/24/2020**

Time to Answer in Opposition No. 91248176	<b>3/25/2020</b>
Deadline for Discovery Conference in Opposition No. 91248176	<b>4/24/2020</b>
Discovery Opens	<b>4/24/2020</b>
Initial Disclosures Due	<b>5/24/2020</b>
Expert Disclosures Due	<b>9/21/2020</b>
Discovery Closes	<b>10/21/2020</b>
Plaintiff's Pretrial Disclosures Due	<b>12/5/2020</b>

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extend includes a statement that the parties have conducted the mandatory discovery conference; therefore, the Board presumes the parties have, in fact, done so.

<sup>4</sup> The parties should note that if proceedings are suspended for a lengthy period of time pursuant to the filing of several motions to suspend for settlement, the Board retains discretion to condition the approval of any future consented or stipulated motion to suspend on a party or the parties providing necessary information about the status of settlement talks, discovery activities, or trial activities, as may be appropriate. *See* Trademark Rule 2.117(c).

Plaintiff's 30-day Trial Period Ends	<b>1/19/2021</b>
Defendant's Pretrial Disclosures Due	<b>2/3/2021</b>
Defendant's 30-day Trial Period Ends	<b>3/20/2021</b>
Plaintiff's Rebuttal Disclosures Due	<b>4/4/2021</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>5/4/2021</b>
Plaintiff's Opening Brief Due	<b>7/3/2021</b>
Defendant's Brief Due	<b>8/2/2021</b>
Plaintiff's Reply Brief Due	<b>8/17/2021</b>
Request for Oral Hearing (optional) Due	<b>8/27/2021</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 final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

#### **TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS**

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered

Opposition Nos. 91248100 and 91248176

– use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. **Note:** Parties are strongly encouraged to check the entire document before filing.<sup>5</sup> The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the [ESTTA help](#) webpage.

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<sup>5</sup> To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.