

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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RK/tdc

August 26, 2020

Opposition No. **91249003 (parent)**

The a2 Milk Company Limited

v.

Société des Produits Nestlé S.A.

Opposition Nos. **91251140**
91254891

Société des Produits Nestlé S.A.

v.

The a2 Milk Company Limited

Yong Oh (Richard) Kim, Interlocutory Attorney:

Consolidation

Following a 90-day suspension of Opposition No. 91249003 on May 1, 2020, Société des Produits Nestlé S.A. (“Applicant”), on May 27, 2020, filed a joint motion to consolidate Opposition Nos. 91249003, 91251140 and 91254891. It is noted that issue has been joined in all three proceedings.

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 Wis. Cheese Grp., LLC v. Comercializadora de*

Opposition Nos. 91249003 (parent), 91251140 and 91254891

Lacteos y Derivados, 118 USPQ2d 1262, 1264 (TTAB 2016). In determining whether proceedings should be consolidated, 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. *Id.*

Considering that the parties are identical, the issues raised in the proceedings are similar or related, and the parties are in agreement as to consolidation, the motion to consolidate is hereby **GRANTED. Opposition Nos. 91249003, 91251140 and 91254891 are CONSOLIDATED** and may be presented on the same record and briefs. *See Hilson Research Inc. v. Society for Human Res. Mgmt.*, 27 USPQ2d 1423, 1424 n.1 (TTAB 1993).

The Board file will be maintained in **Opposition No. 91249003 as the “parent” case**. The parties should no longer file separate papers in connection with each proceeding, but file only a single copy of each paper in the parent case. Each paper filed should bear the numbers of all consolidated proceedings in ascending order, and the parent case should be designated as such in the case caption.

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 and a copy of the final decision shall be placed in each proceeding file. *See* 9A C. Wright & A. Miller, *Fed. Prac. & Proc. Civ.* § 2382 (3d ed.). The parties should promptly inform the Board of any other Board proceedings that may be related

within the meaning of Fed. R. Civ. P. 42, so that the Board can consider whether further consolidation is appropriate.

Suspension for Civil Action

On July 21, 2020, Applicant filed a joint motion to suspend these consolidated proceedings pending the final disposition of a civil action involving The a2 Milk Company Limited (“Opposer”).¹

In view of the parties’ consent thereto, the motion to suspend is hereby **GRANTED**. See Trademark Rule 2.117(a), 37 C.F.R. § 2.117(a). Proceedings herein are **SUSPENDED** pending final disposition² of the civil action between the parties.³

Within **TWENTY DAYS** after the final determination of the civil action, the parties shall so notify the Board and call this case up for any appropriate action. During the suspension period, the parties shall notify the Board of any address changes for the parties or their attorneys. In addition, the parties are to promptly inform the Board of any other related cases, even if they become aware of such cases

¹ *Braum’s, Inc. v. a2 Milk Company Ltd.*, Case No. 5:20-cv-00466 in the United States District Court for the Western District of Oklahoma.

² A proceeding is considered to have been finally determined when an order or ruling that ends litigation has been rendered, and no appeal has been filed, or all appeals filed have been decided and the time for any further review has expired. The expiration of any further review includes the time for petitioning for rehearing or U.S. Supreme Court review. The Board will not resume proceedings until after the time for seeking such review has expired, a decision denying or granting such review has been rendered, and any further review has been completed.

³ In view thereof, Applicant’s consented motion for extension (filed August 20, 2020) is moot and will be given no further consideration.

during the suspension period since the Board may, if appropriate, consolidate related Board cases upon resumption.

Bar Information of Primary Attorney Required

The record shows that Applicant and Opposer are represented by counsel. Effective August 3, 2019, the USPTO amended its rules to require all practitioners qualified under § 11.14(a) to provide the name of the State (as defined in Patent and Trademark Rule 11.1) in which counsel is an active member in good standing, the date of admission to the bar of the named State, and the bar license number. *See* Trademark Rule 2.17(b)(3), 37 C.F.R. § 2.17(b)(3). If the bar license number is considered proprietary, counsel may submit the bar number as confidential to mask it from public view. Where each party is represented by multiple attorneys, only the primary attorney's bar information need be provided.

Accordingly, Applicant and Opposer are each allowed **THIRTY DAYS** from the mailing date of this order to provide the information above using the Change of Address form in ESTTA. The bar information entered on the ESTTA Change of Address form will be masked from TTABVUE. The Board may issue an order to show cause to any party that fails to comply with this order.

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