

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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dmd

September 23, 2020

Opposition No. 91253105 (parent)

Opposition No. 91253653

Opposition No. 91254743

Chubby Gorilla, Inc.

v.

Hills Point Industries, LLC

Ellen Yowell, Paralegal Specialist:

I. MOTIONS TO DIVIDE

On August 24, 2020, Applicant filed a motion to divide application Serial No. 88184698 in Opposition No. 91253105, and a motion to divide application Serial Nos. 88344162 and 88612360 in Opposition No. 91254743. Applicant submitted the required fee. *See* TBMP § 516 and Trademark Rule 2.87(b). In view thereof, and inasmuch as Opposer does not object thereto, the motion to divide is granted and the matter is forwarded to the Intent to Use Division of the Office for consideration of dividing the application as set forth below.

a. Application Serial No. 88184698

The “parent” application Serial No. 88184698 shall include “Spice jars sold empty; Organizers for use with food storage containers, namely, spice jars” in International Class 21, which remains subject to Opposition No. 91253105.

The “child” application shall include all other goods in the application, namely, International Class 20 in its entirety, and “Cheese board and knife set; Ironing board covers; Laundry baskets; Lemon squeezers; non-electric portable beverage coolers; Mortars and pestles for kitchen use” in International Class 21. The goods in the child application are not subject to this opposition proceeding, and the child application shall be forwarded to the Publication and Issue section of this Office for further appropriate action.

b. Application Serial No. 88344162

The “parent” application Serial No. 88344162 shall include “Plastic storage containers for household use” in International Class 21, which remains subject to Opposition No. 91254743.

The “child” application shall include all other goods in the application, namely, International Classes 24 and 27 in their entirety, and “Caddies for holding toiletries, soaps, shampoos, shower caps, shaving razors, washing sponges for household use; Caddies for holding toilet cleaning brushes and toilet cleansers for household use; Caddies for holding cosmetics for household use; Caddies for holding food cans and jars for household use; Caddies for holding beverage cans for household use; Caddies for holding bottles of cleansers, brushes, sponges, scouring pads for household use; Caddies for holding pet grooming brushes, pet combs, pet nail clippers, pet hair clippers, pet shampoo, pet food, pet treats, pet medicines and diet aids, pet toys, pet harnesses, pet leashes for household use; Caddies for holding household cleansers, dishwashing detergents, laundry detergents, fabric softeners sheets, oven cleaners, rags, sponges for household use; Cat litter boxes; Lint brushes; Toilet paper holders”

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in International Class 21. The goods in the child application are not subject to this opposition proceeding, and the child application shall be forwarded to the Publication and Issue section of this Office for further appropriate action.

c. Application Serial No. 88612360

The “parent” application Serial No. 88612360 shall include “food storage containers with removable lids; food storage containers made of glass; food storage containers made of plastic; food storage containers that form a vacuum seal to keep food fresh; food storage containers that releasably lock a lid to the container” in International Class 21, which remains subject to Opposition No. 91254743.

The “child” application shall include all other goods in the application, namely, International Classes 8, 12, 18, 19, 20, 24, 25 and 27 in their entirety, and “squeegees for household use; shower squeegees; grooming tools for pets, namely, brushes” in International Class 21. The goods in the child application are not subject to this opposition proceeding, and the child application shall be forwarded to the Publication and Issue section of this Office for further appropriate action.

II. ASSIGNMENT OF APPLICATION 88612360 (OPPOSITION 91254743)

A review of the assignment record of application Serial No. 88612360 reveals that the application was assigned from Hills Point Industries, Inc. to Hills Point Industries, LLC by entity conversion executed on September 16, 2019. The assignment was recorded on November 13, 2019 at Reel/Frame 6794/0891.

When there has been an assignment of a mark that is the subject of, or relied upon in, an inter partes proceeding before the Board, the assignee may be joined or

substituted, as may be appropriate, upon motion granted by the Board, or upon the Board's own initiative. TBMP § 512.01.

Here, because the involved application was assigned occurred prior to the commencement of the proceeding via entity conversion, substitution is appropriate. Accordingly, Hills Point Industries, LLC is hereby substituted as the party defendant in Opposition No. 91254743 and the Board's records have been updated accordingly.

III. CONSOLIDATION

On July 30, 2020, Opposer filed a motion to consolidate Opposition Nos. 91253105, 91253653 and 91254743. On August 19, 2020, Applicant filed its consent to the consolidation. The Board notes 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 Nos. 91253105, 91253653 and 91254743 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 Nos. 91253105 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.¹

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. The proceeding schedule is reset as set forth below.

Expert Disclosures Due	10/31/2020
Discovery Closes	11/30/2020
Plaintiff's Pretrial Disclosures Due	1/14/2021
Plaintiff's 30-day Trial Period Ends	2/28/2021
Defendant's Pretrial Disclosures Due	3/15/2021
Defendant's 30-day Trial Period Ends	4/29/2021
Plaintiff's Rebuttal Disclosures Due	5/14/2021

¹ 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.

Plaintiff's 15-day Rebuttal Period Ends	6/13/2021
Plaintiff's Opening Brief Due	8/12/2021
Defendant's Brief Due	9/11/2021
Plaintiff's Reply Brief Due	9/26/2021
Request for Oral Hearing (optional) Due	10/6/2021

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).