

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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July 7, 2020

Opposition No. 91255466 (parent case)
Opposition No. 91255467
Opposition No. 91255790
Opposition No. 91255793

Black Bear Enterprises, Inc.

v.

Red Bear Provisions LLC

Michael Webster, Interlocutory Attorney:

On June 29, 2020, Red Bear Provisions (“Applicant”) filed a motion to consolidate Opposition Nos. 91255466, 91255467, 91255790 and 91255793. 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 Res. Mgmt.*, 27 USPQ2d 1423 (TTAB 1993).

The Board notes Opposer's notice of intention to object to the motion to consolidate (filed June 24, 2020). However, as noted above, consolidation is solely within the Board's discretion. In the aforementioned opposition proceedings, the parties are identical, the involved marks are highly similar, and the claim in each proceeding is the same. In addition, Opposer has cited the same registrations as the basis of its likelihood of confusion claim in each proceeding. Consolidating the four highly similar proceedings will save the Board significant time, effort and resources. Accordingly, the motion to consolidate is **granted**. Opposition Nos. 91255466, 91255467, 91255790 and 91255793 are hereby consolidated and may be presented on the same record and briefs. *See Hilson Research Inc. v. Society for Human Res. Mgmt.*, *supra*; and *Helene Curtis Ind. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

The Board file will be maintained in Opposition No. **91255466** 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

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.

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.

Deadline for Discovery Conference	8/3/2020
Discovery Opens	8/3/2020
Initial Disclosures Due	9/2/2020
Expert Disclosures Due	12/31/2020
Discovery Closes	1/30/2021
Plaintiff's Pretrial Disclosures Due	3/16/2021
Plaintiff's 30-day Trial Period Ends	4/30/2021
Defendant's Pretrial Disclosures Due	5/15/2021
Defendant's 30-day Trial Period Ends	6/29/2021
Plaintiff's Rebuttal Disclosures Due	7/14/2021
Plaintiff's 15-day Rebuttal Period Ends	8/13/2021
Plaintiff's Opening Brief Due	10/12/2021
Defendant's Brief Due	11/11/2021
Plaintiff's Reply Brief Due	11/26/2021
Request for Oral Hearing (optional) Due	12/6/2021

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

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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).