

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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March 17, 2021

**Opposition No. 91264769 (Parent case)**  
Opposition No. 91264770

*Hell Energy Magyarország Kft*

*v.*

*Pick Six Investments, LP*  
*(by correction of name from Pick Six*  
*Holdings Inc.)*

**J. Krisp, Interlocutory Attorney:**

**I. Amendment to applications<sup>1</sup>**

Applicant's motions, filed in each proceeding on March 15, 2021, to amend its involved application Serial Nos. 88357014 and 88356974 to correct its name is hereby **granted<sup>2</sup>**.

Inasmuch as the amendment is a correctable error in accordance with TMEP §1201.02(c), the records of the applications, and the caption above, have been updated to reflect the correct legal name of the Applicant as Pick Six Investments, LP.

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<sup>1</sup> Applicant's motion is not double-spaced, as required by Trademark Rule 2.126(a)(1). The Board has given consideration to the motion, though the Board expects that all future submissions will comply with this rule. TBMP § 106.03.

<sup>2</sup> In its motion, Applicant has represented that Pick Six Holdings Inc. did not exist at the time of filing the applications, nor does it exist today, and that the incorrect name of the Applicant was mistakenly used on the application. TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1201.02(c)(7) (2018).

## II. Consolidation

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); and *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991).

The parties to these proceedings are identical, and the issues are similar or related. Although Pick Six Investments, LP has not yet filed its answer in either proceeding for which consolidation is sought, consolidation is appropriate. Accordingly, Opposition Nos. 91264769 and 91264770 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 No. **91264769** as the “parent case.” From this point forward, only a single copy of all motions and submissions

should be filed, and each submission should be filed in the parent case only, and should caption all consolidated proceeding numbers, listing and identifying the parent case first (as in the caption above). Inasmuch as these proceedings are being consolidated prior to joinder of the issues in each proceeding, **Applicant should file a separate answer in each opposition** before commencing the practice of filing a single copy of all submissions in the parent case.<sup>3</sup> Each answer must be filed through ESTTA, the Board's Electronic System for Trademark Trials and Appeals. *See* Trademark Rule 2.106(b)(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.

The deadline for Applicant to file its answer, as well as discovery, conferencing, disclosure and trial dates, remain as set in the Board's February 23, 2021 order. The dates are copied below:

Time to Answer	3/25/2021
Deadline for Required Discovery Conference	4/24/2021
Discovery Opens	4/24/2021
Initial Disclosures Due	5/24/2021
Expert Disclosures Due	9/21/2021
Discovery Closes	10/21/2021
Plaintiff's Pretrial Disclosures Due	12/5/2021
Plaintiff's 30-day Trial Period Ends	1/19/2022

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<sup>3</sup> 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.

Defendant's Pretrial Disclosures Due	2/3/2022
Defendant's 30-day Trial Period Ends	3/20/2022
Plaintiff's Rebuttal Disclosures Due	4/4/2022
Plaintiff's 15-day Rebuttal Period Ends	5/4/2022
Plaintiff's Opening Brief Due	7/3/2022
Defendant's Brief Due	8/2/2022
Plaintiff's Reply Brief Due	8/17/2022
Request for Oral Hearing (optional) Due	8/27/2022

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).

Opposition Nos. 91264769 (parent case); 91264770