

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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July 1, 2022

Opposition No. 91245800 (**Parent**)
Opposition No. 91246515
Opposition No. 91264970
Opposition No. 91264972

Constellation Brands U.S. Operations Inc.

v.

The Vineyard House LLC

Mary Beth Myles, Interlocutory Attorney:

These proceedings now come before the Board for consideration of the following: (1) Opposer's motion (filed February 19, 2022) to amend its notice of opposition in Opposition No. 91245800; (2) Applicant's motions (filed April 1, 2022) to suspend proceedings in Opposition Nos. 91245800, 91264970, and 91264972; (3) Opposer's motions to compel in Opposition Nos. 91264970 and 91264972; and (4) Opposer's cross-motion to strike Applicant's motion to suspend in Opposition No. 91245800.¹

The Board has considered the parties' briefs on the contested motions, but does not repeat or discuss all of their arguments, except as necessary to explain the Board's order. *Guess? IP Holder LP v. Knowlux LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015).

¹ Opposer's change of correspondence address, filed July 21, 2021, and Applicant's change of correspondence address, filed July 22, 2021, are noted.

I. Sua Sponte Consolidation

It has come to the Board's attention that Opposition Nos. 91264970 and 91264972 involve the same parties and common questions of law or fact as the previously consolidated Opposition Nos. 91245800 and 91246515.

Accordingly, the Board orders further consolidation of Opposition Nos. 91264970 and 91264972 with the previously consolidated proceedings. *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). The consolidated cases may be presented on the same record and briefs. *See Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989); *Hilson Res. Inc. v. Soc. For Human Resource Mgmt.*, 26 USPQ2d 1423 (TTAB 1993).

The file record will be maintained in Opposition No. 91245800 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.²

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.

² 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.

II. Opposer’s Motion to Amend its Notice of Opposition in Opposition No. 91245800

By way of its motion, Opposer seeks to amend its pleading in Opposition No. 91245800 to add claims of false suggestion of a connection, likelihood of confusion, and deceptive misdescriptiveness.

In support thereof, Opposer argues that the amendments should be permitted to “rectify” the disparity in the claims asserted by Opposer in each of these consolidated proceedings.³ Specifically, in Opposition No. 91245800, Opposer pleaded claims of lack of bona fide intent to use and fraud, while in Opposition Nos. 91246515, 91264970, and 91264972, Opposer pleaded claims of likelihood of confusion, false suggestion of a connection, and deceptive misdescriptiveness. Opposer argues that Applicant will not be prejudiced, because it is already defending these claims in the other proceedings and because over two months remained in discovery when Opposer filed its motion.⁴

In response, Applicant argues that Opposer unduly delayed in seeking to amend its notice of opposition. Specifically, Applicant argues that this proceeding was pending for over three years at the time Opposer filed its motion. Applicant also argues that Opposer amended its notice of opposition in Opposition No. 91264515 on August 18, 2021 to assert the same claims, but waited another six months to file its motion in Opposition No. 91245800. Although discovery has not yet closed, Applicant

³ 22 TTABVUE 4.

⁴ 22 TTABVUE 7-8, Opposition No. 91245800.

argues that there is insufficient time remaining in discovery for it to draft and serve timely discovery requests or notice depositions.

Inasmuch as Applicant filed its answer in Opposition No. 91245800 more than twenty-one days ago, Opposer may amend its notice of opposition only by written consent of Applicant or by leave of the Board. *See* Fed. R. Civ. P. 15(a); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 507.02(a) (2022).

The Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties. *See id.* *See also American Optical Corp. v. American Olean Tile Co.*, 168 USPQ 471 (TTAB 1971).

In deciding whether to grant leave to amend, a tribunal may consider undue delay, prejudice to the opposing party, bad faith or dilatory motive, futility of the amendment, and whether the party has previously amended its pleadings. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). “[W]here the moving party seeks to add a new claim, and the proposed pleading thereof is legally insufficient, or would serve no useful purpose, the Board normally will deny the motion for leave to amend.” *Giersch v. Scripps Networks Inc.*, 85 USPQ2d 1306, 1309-1310 (TTAB 2007).

The timing of the motion for leave to amend is a major factor in determining whether Applicant would be prejudiced by allowance of the proposed amendment. *See* TBMP § 507.02 and cases cited therein. A motion for leave to amend should be filed as soon as any ground for such amendment, e.g., newly discovered evidence, becomes apparent. A long delay in filing a motion for leave to amend may render the

amendment untimely. *See Int'l Finance Co. v. Braco Co.*, 64 USPQ2d 1597, 1604 (TTAB 2002). “Any party who delays filing a motion for leave to amend its pleading and, in so delaying, causes prejudice to its adversary, is acting contrary to the spirit of Rule 15(a) and risks denial of that motion.” *See Trek Bicycle Corp. v. StyleTrek Ltd.*, 64 USPQ2d 1540, 1541 (TTAB 2002) (citing WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE CIVIL § 1488 (1990)); Chapman, *Tips from the TTAB: Amending Pleadings: The Right Stuff*, 81 Trademark Reporter 302, 307 (1991).

In this instance, the Board does not find any evidence of bad faith or dilatory motive on the part of Opposer on the record. The Board also notes that this is the first instance where Opposer has sought to amend its pleading and thus Opposer has not abused its right to amend its pleading. Additionally, with respect to the sufficiency of the proposed amended pleading, the Board finds that Opposer has sufficiently pleaded its entitlement to a statutory cause of action, as well as its claims of likelihood of confusion, false suggestion of a connection, and deceptive misdescriptiveness.⁵

The Board finds, however, that Opposer unduly delayed in seeking to amend its notice of opposition. Opposer argues that the delay in seeking to amend its notice of opposition was caused in part by the fact that these proceedings were suspended for two years pending disposition of a civil action.⁶ While this is correct, proceedings were

⁵ In its brief in response to the motion to amend, Applicant argues that Opposer’s proposed claims are futile, because it does not have any rights in the CRABB mark. 23 TTABVUE 7. Applicant’s arguments go to the merits of the proposed claim; however. In determining a motion for leave to amend to assert an additional ground for opposition, the Board does not consider the merits of the underlying claim, but only whether the claim is deficiently pleaded or unavailable or would otherwise serve no useful purpose.

⁶ 23 TTABVUE 3.

resumed on July 19, 2021 and Opposer waited seven months after proceedings were resumed to file its motion. The only reason Opposer proffers for this delay is that the parties were engaged in settlement discussions.⁷ However, at no point did the parties file a consented motion to suspend proceedings and, therefore, opposer “could not reasonably have concluded that it need not concurrently shoulder its responsibility for moving the case forward and for preparing all possible claims for trial.” *Media Online Inc. v. El Clasificado, Inc.*, 88 USPQ2d 1285, 1286-87 (TTAB 2008).

Opposer argues that Applicant cannot be prejudiced, because discovery is still open. However, prejudice may also result where a plaintiff unjustifiably delays in amending its pleading, thus resulting in “piecemeal prosecution” of the plaintiff’s claims. *Id.* at 1286 (“piecemeal prosecution of [a] case would unfairly prejudice [defendant] by increasing the time, effort, and money that [defendant] would be required to expend to defend” against the claims). Opposer provides no valid justification for its delay in seeking to add its claims. *Trek Bicycle Corp. v. StyleTrek Ltd.*, 64 USPQ2d 1540 (TTAB 2011) (motion for leave to amend filed prior to close of discovery but based on facts known to opposer prior to institution of proceeding denied due to unexplained delay). Because the same claims were pleaded in Opposition Nos. 91246515, 91264970, and 91264972, Opposer cannot claim that it was unaware of the bases for these claims. Indeed, in its response to Applicant’s motion to dismiss the original notice of opposition, Opposer argued that it did not and was not required to plead a claim of likelihood of confusion.⁸

⁷ *Id.* at 6, 8.

⁸ 6 TTABVUE 5.

Finally, Opposer's argument that there can be no prejudice to Applicant because it was already defending the same claims in other proceedings is not persuasive. Opposer's proposed amendment would add three additional claims against six different applications for different marks. Contrary to Opposer's description of the marks as all "CRABB-formative" marks, that is, in fact, not the case. Two of Applicant's involved applications in Opposition No. 91245800 do not include the word "CRABB," specifically, Application 87944988 for the standard character mark HENRY WALKER and Application Serial No. 8794490 for the standard character mark HENRY WALKER (H.W.). Discovery concerning the additional claims may therefore not be duplicative of the discovery conducted in the other consolidated cases.

In view of the foregoing, the Board finds that Opposer unduly delayed in filing its motion to amend and the motion is **denied**.

III. Opposer's Cross-Motion to Strike Applicant's Motion to Suspend in Opposition No. 91245800

Opposer moves to strike Applicant's motion to suspend in Opposition No. 91245800 only on the ground that it was improperly filed while proceedings were suspended pending disposition of Opposer's motion to amend its notice of opposition. While the Board's March 21, 2022 order did suspend proceedings pending disposition of the motion to amend, the Board's suspension order also specifically stated that the suspension order did not toll the time for either party to respond to outstanding discovery. 24 TTABVUE. By way of its motion, Applicant seeks suspension of proceedings in their entirety, including a suspension of discovery and discovery

deadlines.⁹ Accordingly, while the Board stated that any papers not relevant to the motion to amend would not be considered during the suspension period, Applicant was otherwise required to comply with its outstanding discovery obligations during the suspension period. It was therefore appropriate for Applicant to file a motion to suspend or extend with respect to any deadlines that were not previously tolled by the Board's suspension order.

In view of the foregoing, Opposer's motion to strike Applicant's motion to suspend in Opposition No. 91245800 is **denied**.¹⁰

IV. Applicant's Motions to Suspend Opposition Nos. 91245800, 91246515, 91264970, and 91264972

The Board turns next to Applicant's motions to suspend in each of these consolidated cases. Inasmuch as the motions are substantively the same, the Board addresses them together.¹¹

As an initial matter, Applicant's motions to suspend are single-spaced in contravention of Trademark Rule 2.126(a)(1). The Board may refuse to consider any future filings that do not meet the requirements of Trademark Rule 2.126(a)(1) or any other applicable rule.

⁹ 26 TTABVUE, Opposition No. 91245800.

¹⁰ On May 31, 2022, Applicant filed a "response to Opposer's reply" to its motion to strike. 30 TTABVUE. Applicant's filing is an improper surreply and has been given no consideration. *See* Trademark Rule 2.127(a).

¹¹ The parties' failure to timely advise the Board of Opposition Nos. 91264970 and 91264972 as potentially related proceedings—which the Board specifically instructed the parties to do in both the institution order and in its January 10, 2020 order in Opposition No. 91245800—resulted in the filing of three similar, but not identical motions to suspend, each of which created similar, but not identical, further motion practice in each of these proceedings. The parties' failure to advise the Board of the related proceedings resulted in delayed consolidation and the expenditure of unnecessary additional time and resources from the Board to review the motions in each of these proceedings.

By way of its motions, Applicant seeks to suspend all of these consolidated proceedings for a period of at least six months, because “Applicant’s principal is totally and completely unavailable and unreachable at this time, and as a result is unable to assist, or participate, in Applicant’s prosecution of this matter.”¹² Although Applicant requests a suspension of six months, Applicant states that it is “unclear how long this period of unavailability will last.”¹³ Applicant’s counsel also states that they do not “believe that there are any other individuals presently associated with Applicant who could step in and assist in the prosecution of this matter in lieu of Applicant’s principal.”¹⁴ In its April 29, 2022 filing, Applicant states that if the Board requires more information concerning its principal’s medical issues, Applicant requests an ex parte telephone conference with the Board.¹⁵

In response, Opposer argues that Applicant is a corporate entity and that its principal, Jeremy Nickel, is not the sole employee.¹⁶ Opposer identifies five other employees who are likely to be able to assist with discovery, based in part on their involvement in the civil action between the parties.¹⁷ Opposer also states that Applicant has not otherwise been diligent in these proceedings.¹⁸ With respect to Applicant’s request for an ex parte telephone conference, Opposer argues that Applicant’s evidence and arguments supporting its motion to suspend should have

¹² 26 TTABVUE 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 28 TTABVUE.

¹⁶ 27 TTABVUE 12.

¹⁷ *Id.*

¹⁸ *Id.* at 10-12.

been provided in its moving papers and that the presentation of additional argument outside the presence of Opposer would unfairly deprive Opposer of an opportunity to respond.¹⁹

Trademark Rule 2.117(c) provides that proceedings may be suspended upon consent of the parties or upon motion for good cause. “All motions to suspend, regardless of circumstances,... are subject to the ‘good cause’ standard.” *Nat’l Football League v. DNH Mgmt. LLC*, 85 USPQ2d 1852, 1855 n.8 (TTAB 2008). To show good cause, the moving party must set forth with particularity the facts allegedly constituting good cause and must demonstrate that the extension or suspension is not necessitated by the moving party’s own lack of diligence or unreasonable delay. *Id.* at 1854.

Applicant’s request for an ex parte phone conference is **denied**. To the extent Applicant intended to provide additional facts to support its motion, this would be improper. A party’s arguments and evidence must be submitted with its brief in support of its motion. *See Kellogg Co. v. Pack’Em Enters. Inc.*, 14 USPQ2d 1545, 1549 n. 9 (TTAB 1990), *aff’d*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991). To the extent Applicant argues that an ex parte conference is necessary to relay private information concerning Mr. Nickel’s health outside the presence of Opposer, the argument is not well taken. The Board does not require detailed, personal information concerning Mr. Nickel’s medical issues; however, the Board **does** require facts stated with

¹⁹ 29 TTABVUE 4.

particularity that explain how a suspension is necessary in light of his purported unavailability.

Mr. Nickel is not the Applicant in any of these consolidated proceedings. Rather, Applicant is a corporate entity and the Board expects that other individuals are able and available to participate and instruct Applicant's counsel of record in this proceeding. Applicant's counsel has provided no explanation for its conclusory assertion that it believes there is no one else available to assist with Applicant's defense of these proceedings.

Nor has Applicant explained how the unavailability of Mr. Nickel warrants a complete suspension of all deadlines in all four consolidated proceedings. Even assuming that Mr. Nickel's unavailability may have an impact on certain specific deadlines (e.g., the discovery deposition of Mr. Nickel), Applicant makes no effort to explain how Mr. Nickel's purported unavailability affects all deadlines in these proceedings. As an example, Applicant's counsel cancelled the noticed deposition of Opposer, which was scheduled to take place on April 12, 2022.²⁰ It is entirely implausible that Mr. Nickel's purported unavailability should have any impact on Applicant's counsel's ability to proceed with the discovery deposition of Opposer—a deposition that was cancelled a mere six days before it was scheduled to occur and for which the Board presumes Applicant's counsel must have prepared in advance.

Moreover, over three months have passed since Applicant's counsel first learned of Mr. Nickel's unavailability. The Board therefore presumes that circumstances may

²⁰ 27 TTABVUE 8, 31-32.

have changed or, at a minimum, that Applicant's counsel should have more information concerning the length and extent of Mr. Nickel's medical issues or unavailability.

In view of the foregoing, the Board finds that Applicant has not set forth any facts with sufficient particularity to warrant suspension of these four consolidated proceedings for a period of six months. Applicant's motion to suspend is therefore **denied, without prejudice.**

V. Opposer's Motions to Compel in Opposition Nos. 91264970 and 91264972

On April 21, 2022, Opposer filed a combined motion to compel and test the sufficiency of Applicant's responses to requests for admission separately in Opposition Nos. 91264970 and 91264972.²¹ Applicant did not file a timely, clear response to the motions to compel. *See* Trademark Rule 2.127(a). Rather, Applicant filed a request for an ex parte conference with the Board. For the same reasons discussed above, Applicant's request for an ex parte conference with the Board is denied. Any arguments made in response to the motion to compel should have been filed with the Board within twenty days of Opposer's motions. *Id.* Applicant again makes no effort to explain how Applicant's principal's medical issues prevent Applicant's counsel from filing a brief in response to the motion to compel. As

²¹ Opposer relies on the declaration of its counsel, Kenneth Wilton, in support of both motions to compel. The declaration was attached to the motion to compel in Opposition No. 91264970, but was not filed in Opposition No. 91264972. The Board presumes the facts set forth in the Wilton declaration are equally applicable to both proceedings, but it is unclear. The motions are similar, but not identical. The parties' failure to inform the Board of these two related proceedings to allow for timely consolidation has resulted in an unwieldy record and inefficient motion practice.

Applicant clearly acknowledges in its request for an ex parte conference, Applicant could have, at a minimum, made legal “objections” to the motion.²² It is entirely unclear how Applicant’s principal’s lack of availability has any impact on Applicant’s counsel’s ability to present argument as the appropriateness of its objections or the relevance of Opposer’s discovery requests. In this instance, however, the Board exercises its discretion to consider the motions on the merits, rather than grant the motions as conceded. *See* Trademark Rule 2.127(a).

As an initial matter, the Board finds that the motions are timely inasmuch as they were filed prior to the day of the deadline for Opposer’s pretrial disclosures in each proceeding. *See* Trademark Rule 2.120(f)(1). The Board finds, however, that Opposer has failed to make the required good faith effort to resolve the parties’ discovery dispute prior to seeking Board intervention.

A motion to compel must be supported by a written statement that the moving party has made a good faith effort, by conference or correspondence, to resolve with the other party or its attorney the issues presented in the motion, and has been unable to reach agreement. Trademark Rule 2.120(f)(1). The purpose of the good faith effort requirement is to “promote a frank exchange between counsel to resolve issues by agreement or to at least narrow and focus the matters in controversy before judicial resolution is sought.” *Amazon Tech., Inc. v. Wax*, 93 USPQ2d 1702, 1705

²² 20 TTABVUE 4, Opposition No. 91264970. In its filing, Applicant states that “[a]bsent relief, Applicant cannot respond to Opposer’s Motion to Strike, except as to legal objections.” *Id.* Opposer filed a motion to strike in Opposition No. 91245800, not in 91264970 or 91264972. Applicant’s clerical error further highlights the confusion and inefficiencies caused by the parties’ joint failure to advise the Board of the related proceedings promptly.

(TTAB 2009), quoting *Dondi Properties Corp. v. Commerce Savings and Loan Ass'n*, 121 F.R.D. 284, 289 (N.D. Tex. 1988) (construing a local rule less demanding than Trademark Rule 2.120(f)(1)). Moreover, “[w]here it is apparent that the effort toward resolution is incomplete, establishing the good faith effort that is a prerequisite for a motion to compel necessitates that the inquiring party engage in additional effort toward ascertaining and resolving the substance of the dispute.” *Hot Tamale Mama ... and More, LLC v. SF Investments, Inc.*, 110 USPQ2d 1080, 1081 (TTAB 2014).

Here, Opposer served its discovery requests on October 29, 2021, and Applicant served its responses on December 20, 2021.²³ Opposer’s counsel sent Applicant’s counsel a letter detailing perceived deficiencies in Applicant’s responses in Opposition No. 91264970 on March 14, 2022 and in Opposition No. 91264972 on March 18, 2022.²⁴ In both letters, Opposer’s counsel demanded amended responses by March 25, 2022.²⁵ On March 23, 2022, Applicant’s counsel sent an email stating that “Due to an unforeseen event, the client is unavailable and we are unable to communicate with him for a period of time, the length of which is currently undetermined.”²⁶ Opposer’s counsel then states that he “again wrote to Applicant’s counsel reminding Applicant of its discovery obligations” on March 25, 2022.²⁷ On the same day, Applicant’s counsel responded by stating that “as we advised you on Wednesday, due to an unforeseen event, our client is unavailable and we are unable to communicate with

²³ 18 TTABVUE 29.

²⁴ *Id.* at 30, 148-62.

²⁵ *Id.*

²⁶ *Id.* at 164.

²⁷ *Id.* at 30. Opposer did not attach a copy of the correspondence.

him for a period of time, the length of which is currently undetermined.”²⁸ Applicant then filed its motions to suspend proceedings on April 1, 2022. On April 21, 2022, Opposer filed responses opposing Applicant’s motions to suspend and its motions to compel and test the sufficiency of Applicant’s responses to requests for admission.

While Opposer appears to have responded once to Applicant’s counsel’s statement that Applicant was unexpectedly unavailable, Opposer did not attach the email to its motion. It does not appear that the parties had any meaningful discussion about Applicant’s request for an extension or suspension. Rather, in response to Applicant’s request to extend or suspend proceedings based on the medical issues of Applicant’s principal, Opposer filed a motion to compel. It was clear at the time of the email exchange that the disagreement lay with Applicant’s belief that all discovery should be suspended during the incapacitation of Applicant’s principal, rather than any clear disagreement about Applicant’s document production or discovery responses. While the Board has found that Applicant did not establish good cause for the complete suspension of proceedings for six months, the parties never had a substantive discussion regarding the issues raised in Opposer’s letters, because the question of an extension or suspension had not yet been resolved. Under the circumstances, it was incumbent on Opposer to at least attempt to have one substantive discussion concerning the requested suspension prior to filing its motion to compel on specific objections and discovery responses.²⁹

²⁸ *Id.* at 30-31, 167.

²⁹ Moreover, the motions to compel and test the sufficiency of Applicant’s responses to requests for admission address a total of forty-six separate discovery requests. It appears that many of the discovery requests and responses in Opposition Nos. 91264970 and

The parties are reminded that the purpose of discovery is to advance the case so that it may proceed in an orderly manner within reasonable time constraints. To this end, the parties must adhere to the strictures set forth in *Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666 (TTAB 1986), and repeated below:

[E]ach party and its attorney has a duty not only to make a good faith effort to satisfy the discovery needs of its opponent but also to make a good faith effort to seek only such discovery as is proper and relevant to the specific issues involved in the case. Moreover, where the parties disagree as to the propriety of certain requests for discovery, they are under an obligation to get together and attempt in good faith to resolve their differences and to present to the Board for resolution only those remaining requests for discovery, if any, upon which they have been unable, despite their best efforts, to reach an agreement.

Under the circumstances of these proceedings, the Board finds that Opposer has failed to satisfy the good faith effort requirement of Trademark Rule 2.120(f)(1) for the reasons set forth above. Accordingly, Opposer's motions to compel and test the sufficiency of Applicant's responses to requests for admission are **denied, without prejudice**.

In consequence of the above, the parties are directed to work together to resolve their discovery problems, in the spirit of good faith and cooperation, which is required of all litigants in Board proceedings.

VI. Schedule

These consolidated proceedings are resumed. Remaining dates are reset as follows:

Expert Disclosures Due	7/29/2022
Discovery Closes	8/28/2022

91264972 are identical or highly similar. The presentation of highly similar, but not identical motions, addressing partially identical discovery requests in two separate motions is inefficient and taxing on the resources of the Board.

Plaintiff's Pretrial Disclosures Due	10/12/2022
Plaintiff's 30-day Trial Period Ends	11/26/2022
Defendant's Pretrial Disclosures Due	12/11/2022
Defendant's 30-day Trial Period Ends	1/25/2023
Plaintiff's Rebuttal Disclosures Due	2/9/2023
Plaintiff's 15-day Rebuttal Period Ends	3/11/2023
Plaintiff's Opening Brief Due	5/10/2023
Defendant's Brief Due	6/9/2023
Plaintiff's Reply Brief Due	6/24/2023
Request for Oral Hearing (optional) Due	7/4/2023

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. 91245800, 91246515, 91264970, and 91264972

– 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.³⁰ 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.

³⁰ To facilitate accuracy, ESTTA provides previews of each page before submitting.