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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91266060
Party	Defendant MenEClinic LLC
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Submission	Motion to Consolidate
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7 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
8
9 TRADEMARK TRIAL AND APPEAL BOARD

10 URGENT CARE MSO, LLC,
11 Plaintiff,

12 vs.

13 MENECLINIC LLC,
14 Defendant

Case No.: 91266060

**MOTION TO CONSOLIDATE
PROCEEDINGS OR IF NOT AN
EXTENSION OF TIME**

15
16 Defendant requests that pursuant to TBMP 501 and FRCP Rule 42 that the Board delay these
17 proceedings so that Opposition numbers 90084382 and 91266060 can be consolidated. At
18 least the Defendant asks for an extension of time until 90084382 is fully plead.
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20 **I. BACKGROUND**

21 On July 30, 2020 Defendant filed a TEAS Plus New Application for a trademark logo in
22 International Class 044 for “24-hour response center which provides medical information to
23 emergency medical personnel and allows members to update their medical/personal files;
24 Consulting services in the field of nursing; Medical advisory services; Medical advice for
25 individuals with disabilities; Medical and pharmaceutical consultation; Medical assistance;
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1 Medical assistance services; Medical care; Medical clinic services; Medical clinics; Medical
2 consultations; Medical consulting services in the field of disease infection control; Medical
3 counseling; Medical counseling relating to stress; Medical equipment rental; Medical house
4 call services; Medical imaging services; Medical information; Medical radiology services;
5 Medical screening; Medical screening information services featuring reminder alerts
6 regarding medical examinations that individuals should undergo for preventative care
7 purposes; Medical services; Medical skin care services; Medical, hygienic and beauty care;
8 Telemedicine services; Ambulant medical care; Behavioural analysis for medical purposes;
9 Clinical medical practice consultation services; Conducting medical physical evaluations;
10 Conducting sleep studies for medical diagnostic or treatment purposes; Consulting services
11 in the field of medical care; Consulting services in the field of offshore medical services;
12 DNA screening for medical purposes; Emergency medical assistance; Emergency medical
13 response services; Emergency medical services; Emergency medical services provided on
14 an aircraft; Leasing of medical equipment; Leasing of equipped medical facilities that
15 medical professionals can use on an as-needed basis; Maintaining personal medical history
16 records and files; Medical consultations provided via phone, online chat or
17 videoconferencing; Medical services, namely, providing a network of offshore medical
18 service providers through insurance providers; Multi-disciplinary, integrative, outpatient
19 health care delivery and medical consultations; Nursing, medical; Primary care medical
20 services; Providing medical information; Providing medical information, consultancy and
21

1 advisory services; Provision of medical information; Psychiatric consultation; Rental of
2 medical apparatus; Rental of medical apparatus and instruments; Rental of medical
3 equipment; Residential medical advice services; Residential medical treatment services;
4 Urgent medical care centers; Walk-in medical clinic services.” All under 1(b) intent to use.
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6 After a thorough trademark review by Trademark Examiner Sha McPherson Rayburn a
7 Notice of Publication was issued on September 30, 2020 and published in the Official
8 Gazette on October 20, 2020. Before the end of the 30 (thirty) day opposition period, two
9 Marks filed Notice(s) of Opposition. One of the Opposers asked for an extension of time,
10 and the other immediately began proceedings.
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13 **II. LEGAL STANDARD**

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15 Defendant invokes the following legal standards in this Motion in hopes of persuading the
16 Board in justification of consolidation, thereby saving all parties involved and the Board
17 time, money, and effort. These matters in the opposition are of the same Matters of Law and
18 Matters of Fact.
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21 *FRCP Rule 42. Consolidation; Separate Trials*

22 *(a) Consolidation. If actions before the court involve a common question of law*
23 *or fact, the court may: (1) join for hearing or trial any or all matters at issue*
24 *in the actions; (2) consolidate the actions; or (3) issue any other orders to*
25 *avoid unnecessary cost or delay.*

26 **TBMP 501**

27 *When cases involving common questions of law or fact are pending before*
28 *the Board, the Board may order the consolidation of the cases. In*

1 *determining whether to consolidate proceedings, the Board will weigh the*
2 *savings in time, effort, and expense, which may be gained from*
3 *consolidation, against any prejudice or inconvenience that may be caused*
4 *thereby.*

5 **III. ARGUMENT**

6 The TTAB requests that a consolidation only be granted if it saves time, effort and expense.

7 Consolidation of these proceedings will greatly save all three. Time is saved because the

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9 Opposers will see the frivolity of their ways when they see that they both have the exact

10 same arguments against the Defendant and so for them to continue would mean that they

11 both are infringing upon each other. The Defendant's belief is that this realization will end

12 the proceedings quickly. Effort is saved because the Defendant does not have to make the

13 same Motion and arguments twice. The Board does not have to rule on the same Motions

14 and arguments twice. The Board does not also have to worry about reaching two different

15 conclusions. Since expense is tied mainly to effort and time, expense costs would be greatly

16 diminished by consolidation.

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20 The FRCP requires that a consolidation only happen if the cases in question involve the same

21 questions of law or of fact. The oppositions are for priority and likelihood of confusion

22 between the Marks. The exact same questions of fact and questions of law will be instigated

23 in each proceeding.

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26 The parties are different and the mark application is the same, both oppositions assert

27 likelihood of confusion and priority against the same application, and common questions of

1 law and fact are therefore involved. Much of the discovery and evidence would be the same
2 in both cases. Without consolidation, "duplicative and/or piecemeal discovery and
3 prosecution" in the two proceedings would likely continue.
4

5 Defendant understands that the Board usually prefers to have Answers for the Pleadings
6 before consolidation is granted, but understands that this is not a requirement. If the Board
7 so requires the filing of Answers, Defendant requests an extension of time until the latter
8 proceedings has a pleading filed. Defendant however believes it is in the Board's and the
9 Defendant's best interest to consolidate them immediately after the latter Pleading is filed so
10 that the Defendant can file one Answer with one set of Affirmative Defenses.
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13 **IV. CONCLUSION**
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15 Defendant believes all parties and the Board will benefit from consolidation of Opposition
16 numbers 90084382 and 91266060. Defendant requests an extension of time to file an Answer,
17 until both parties have filed their pleadings. Defendant requests that the Oppositions be
18 consolidated once both pleadings are filed.
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22 Dated this 28th day of December, 2020.
23

24 s/Nathan Brown
25 _____
26 Attorney for the Defendant
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CERTIFICATION OF SERVICE

A copy of this MOTION TO CONSOLIDATE OR IF NOT AN
EXTENSION OF TIME, was emailed to Plaintiff's many emails of record.

s/ Nathan Brown