

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

May 6, 2021

Opposition No. 91266785

Opposition No. 91266788

Opposition No. 91267398

*Q Tonic, LLC*

*v.*

*Elite IP Holdings, LLC*

*(as consolidated)*

Andrew P. Baxley, Interlocutory Attorney:

Opposer's consented motion (filed May 5, 2021) to consolidate the above-captioned proceedings is granted. Because the above-captioned proceedings involve the same parties and common questions of law or fact, the Board hereby orders their consolidation. *See* Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991); TBMP § 511 (2020). The consolidated cases may be presented on the same record and briefs. *See Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989); *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993).

The Board file will be maintained in Opposition No. 91266785 as the "parent" case. As a general rule, from this point onward, parties should file only a single copy of any

submission in the Board file for the parent case. That copy, however, should include all of the consolidated proceeding numbers in the caption thereof.

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleading; a copy of the decision shall be placed in each proceeding file.

In keeping with Board practice, the Board will adopt the discovery and trial schedule for Opposition No. 91267398, the most recently instituted of the consolidated proceedings, as modified by this order. *See* TBMP § 511. Dates are reset as follows:

Deadline for Discovery Conference in 91267398	5/14/2021 <sup>1</sup>
Discovery Opens in 91267398, Reopens in 91266785 and 91266788	5/14/2021 <sup>2</sup>
Initial Disclosures Due	6/13/2021
Expert Disclosures Due	10/11/2021
Discovery Closes	11/10/2021
Plaintiff's Pretrial Disclosures Due	12/25/2021
Plaintiff's 30-day Trial Period Ends	2/8/2022
Defendant's Pretrial Disclosures Due	2/23/2022
Defendant's 30-day Trial Period Ends	4/9/2022

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<sup>1</sup> The consented motions to suspend for settlement negotiations that were filed in each of the above-captioned proceedings on May 5, 2021 were filed between the filing of Applicant's answer and the deadline for the discovery conference in Opposition No. 91267398. Because the schedule in Opposition No. 91267398 is now operative in all of the above-captioned proceedings, those motions are denied. *See Boston Red Sox Baseball Club LP v. Chaveriat*, 87 USPQ2d 1767, 1767 n.1 (TTAB 2008) (the Board generally does not allow extensions or suspensions for settlement negotiations between the filing of an answer and the deadline for the discovery conference because the discovery conference presents an opportunity to discuss settlement); TBMP § 510.03(a).

<sup>2</sup> The parties are allowed until June 13, 2021 to serve responses to any outstanding written discovery requests in Opposition Nos. 91266785 and 91266788.

Plaintiff's Rebuttal Disclosures Due	4/24/2022
Plaintiff's 15-day Rebuttal Period Ends	5/24/2022
Plaintiff's Opening Brief Due	7/23/2022
Defendant's Brief Due	8/22/2022
Plaintiff's Reply Brief Due	9/6/2022
Request for Oral Hearing (optional) Due	9/16/2022

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, 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).