

UNITED STATES PATENT AND TRADEMARK OFFICE
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JLE/vw

October 13, 2021

Opposition No. 91269223 (parent)

Opposition No. 91269420

*Eva M. Beale*¹

v.

Eddie Parker LLC

Jennifer L. Elgin, Interlocutory Attorney:

Sua Sponte Consolidation of Proceedings

It has come to the Board's attention that the parties are engaged in related proceedings. 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); *Wis. Cheese Grp., LLC v. Comercializadora de Lácteos y Derivados, S.A. de C.V.*, 118 USPQ2d 1262, 1264 (TTAB 2016); *Venture Out Props. LLC v. Wynn Resorts Holdings, LLC*, 81 USPQ2d 1887, 1889 and n.7 (TTAB 2007). 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., Wis. Cheese Grp.*, 118 USPQ2d at 1264.

¹ The changes of correspondence filed by Applicant in Opposition Nos. 91269223 and 91269420 on August 20, 2021 are noted, and the Board has updated its records accordingly.

In determining whether to consolidate proceedings, the Board weighs the savings in time, effort, and expense which may be gained from consolidation against any prejudice or inconvenience which may be caused thereby. *World Hockey Ass'n v. Tudor Metal Prods. Corp.*, 185 USPQ 246, 248 (TTAB 1975). See also TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 511 (2021). Consolidation may be denied if it will cause delay in the processing of one or more of the individual cases. See, e.g., *Lever Bros. Co. v. Shaklee Corp.*, 214 USPQ 654, 655 (TTAB 1982) (consolidation denied where one case was in pleading stage, and testimony periods had expired in the other); see also WRIGHT & MILLER, 9A Fed. Prac. & Proc. Civ. § 2383 and cases cited in n.9 (3d ed.).

Here, Opposition Nos. 91269223 and 91269420 involve the same parties represented by the same counsel, related marks, the same goods, and the same grounds for opposition. Accordingly, it is foreseeable that the cases may involve overlapping discovery, witnesses and evidence. Indeed, it appears the parties have been conducting the cases as if they are consolidated. Both proceedings are in their early stages. Consolidation should create efficiencies and conserve the resources of the parties and the Board.

For these reasons, the Board finds that consolidation is appropriate. Opposition Nos. 91269223 and 91269420 may be presented on the same record and briefs. *Hilson Rsch. Inc. v. Soc'y for Hum. Res. Mgmt.*, 27 USPQ2d 1423, 1424 n.1 (TTAB 1993); *Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1619 n.1 (TTAB 1989). The Board file will be maintained in Opposition No. 91269223 as the “parent

case.” From this point on, except as set forth below, only a single copy of all motions and submissions should be filed in the parent case only, but captioned with all consolidated proceeding numbers and identifying the “parent case” first.

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

Suspension for Motion to Compel

Proceedings are **suspended** pending disposition of Opposer’s identical motions, filed on October 11, 2021 in each proceeding, to compel discovery responses, except as discussed below. The parties should not file any paper that is not germane to the motion to compel. *See* Trademark Rule 2.120(f)(2). All papers germane to the motions to compel should be filed in the **parent case** only.

The parties may not serve any additional discovery until the period of suspension is lifted or expires by or under order of the Board. The filing of the motions to compel disclosure or discovery shall not toll the time for a party to comply with any initial disclosure requirement, or to respond to any outstanding discovery requests or to appear for any noticed discovery deposition. *See* Trademark Rule 2.120(f)(2); TBMP § 523.01.

The motions to compel will be decided in due course.

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 the Board can consider whether further consolidation is appropriate.