

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

WDJ/GCP

February 8, 2023

Opposition No. 91265492 (**parent**)
Opposition No. 91271087

Jemie B.V.

v.

Todd Himle

By the Trademark Trial and Appeal Board:

On February 3, 2023, at the request of Opposer, a telephone conference was held to discuss Opposer's motion for leave to file its first amended notice of opposition and request for extension of the discovery and testimony deadlines. 20 TTABVUE in Opposition No. 91271087; *see* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 502.06(a) (2022). Participating were Jonathan S. Jennings and Novaira Paul for Opposer; David S. D'Ascenzo for Applicant; Administrative Trademark Judge George Pologeorgis; and Interlocutory Attorney William Jackson. Based upon the discussions that took place, the Board rules as follows.

I. Proceedings Consolidated

The parties alerted the Board to Opposition No. 91265492 involving Applicant's application to register the mark FLEUR DE CANNA. The parties to Opposition Nos. 91265492 and 91271087 are identical, and the issues are similar or related.

Accordingly, the Board sua sponte consolidates Opposition Nos. 91265492 and 91271087. TBMP § 511. The oppositions may be presented on the same record and briefs. *See Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993; and *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

The Board file will be maintained in Opposition No. 91265492 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. However, inasmuch as these proceedings are being consolidated prior to joinder of the amended issues in each proceeding, Applicant should file a separate answer, as directed below, in each opposition before commencing the practice of filing a single copy of all submissions in the parent case.¹ Each answer must be filed through ESTTA, the Board’s Electronic System for Trademark Trials and Appeals. *See* Trademark Rules 2.106(b)(1) and 2.114(b)(1), 37 C.F.R. §§ 2.106(b)(1) and 2.114(b)(1). Applicant’s deadline for answering is set forth below.

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.

¹ 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. Motion to Amend Granted

For the reasons discussed during the telephone conference, Opposer's motion for leave to file its first amended notice of opposition in each opposition proceeding is **GRANTED**. Opposer's first amended notice of opposition in each opposition is accepted as Opposer's operative pleading in this now consolidated proceeding. *See* Fed. R. Civ. P. 15(a)(1)(A) and (B). Applicant will be granted time to answer the amended notices of opposition as set forth below.

III. Proceedings Suspended

Because the parties are negotiating for a possible settlement of this case, proceedings are suspended for 120 days, up to, and including **June 5, 2023**, subject to the right of either party to request resumption at any time.² *See* Trademark Rule 2.117(c), and 2.127(a), 37 C.F.R. §§ 2.117(c), and 2.127(a); and TBMP § 605.02.

If, during the suspension period, either of the parties or their attorneys have a change of address or email address, the Board should be so informed. *See* Trademark Rule 2.18(b)(1), 37 C.F.R. § 2.18(b)(1).

In the event that there is no word from either party concerning the progress of their negotiations, upon conclusion of the suspension period, proceedings shall resume without further notice or order from the Board, upon the schedule set forth below.

² The parties should note that if proceedings are suspended for a lengthy period of time pursuant to the filing of several motions to suspend for settlement, the Board retains discretion to condition the approval of any future consented or stipulated motion to suspend on a party or the parties providing necessary information about the status of settlement talks, discovery activities, or trial activities, as may be appropriate. *See* Trademark Rule 2.117(c).

IV. Dates Reset

Proceedings Resume: **June 6, 2023.**

Applicant will be allowed **twenty (20) days** from the date of resumption to file its answers to Opposer's amended notices of opposition.³ The parties are allowed **thirty (30) days** from resumption in which to respond to any outstanding discovery.⁴ Additionally, as set forth below, the close of discovery is extended an additional **thirty-five (35) days** for the parties to take discovery limited solely with regard to Opposer's new allegations pleaded in its amended notices of opposition. In particular, the parties may take discovery pertaining to Opposer's allegations regarding (1) its ownership of a "CANNA-family of marks and names," including the trade name CANNA CONTINENTAL and the alleged prior common law mark CANNA TERRA; (2) Opposer's new allegations indicating use of its pleaded marks through a licensee; and (3) Opposer's new allegations concerning the fields of use of its pleaded marks, as well as the new allegations regarding Opposer's trade channels and the manner in which it advertises its pleaded marks and services. Proceeding dates are reset as follows:

Answer due in each opposition	6/26/2023
Responses to outstanding discovery due	7/6/2023
Discovery Closes	7/11/2023
Plaintiff's Pretrial Disclosures Due	8/25/2023
Plaintiff's 30-day Trial Period Ends	10/9/2023
Defendant's Pretrial Disclosures Due	10/24/2023

³ As a reminder, Applicant should file its answers in the corresponding opposition proceedings.

⁴ This allotment of time does not constitute an order to compel responses but merely serves as a scheduling order.

Defendant's 30-day Trial Period Ends	12/8/2023
Plaintiff's Rebuttal Disclosures Due	12/23/2023
Plaintiff's 15-day Rebuttal Period Ends	1/22/2024
Plaintiff's Opening Brief Due	3/22/2024
Defendant's Brief Due	4/21/2024
Plaintiff's Reply Brief Due	5/6/2024
Request for Oral Hearing (optional) Due	5/16/2024

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. 91265492 and 91271087

– 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.⁵ 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.

⁵ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.