

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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October 3, 2022

Opposition No. 91274162 (parent)

Wrangler Apparel Corp.

v.

Balance Athletica, LLC

Opposition No. 91274163

Retail Royalty Company

v.

Balance Athletica, LLC

Opposition No. 91274167

The North Face Apparel Corp.

v.

Balance Athletica, LLC

Ann Linnehan, Interlocutory Attorney

This case comes up for consideration of Balance Athletica, LLC's ("Balance") motion (filed May 31, 2022) to consolidate Opposition Nos. 91274162, 91274163, and 91274167. The motion is fully briefed.

The Board has carefully reviewed and considered the various parties' positions on the issue of consolidation, but does not repeat the arguments here.

After reviewing the parties' arguments, the Board notes that the party plaintiffs in the respective proceedings are unrelated, but the subject mark in each proceeding is the same. The Board further notes that the claims involved in each proceeding are similar if not the same.

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. *See, e.g., Wis. Cheese Grp.*, 118 USPQ2d at 1264. 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* *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 511 (2022).

Because the claims involved are similar and in the interest of judicial economy and to save the Board time, effort, and expense, consolidation is appropriate.

Accordingly, the motion to consolidate is granted. The three proceedings are hereby consolidated and may be presented on the same record and briefs. *See Hilson*

Research Inc. v. Society for Human Resource Management, supra; and *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

The Board file will be maintained in Opposition No. 91274162 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.¹

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.

Opposers are allowed until **thirty days** from the mailing date of this order to appoint one lead counsel to supervise and coordinate the conduct of their case and to file a paper with the Board indicating their appointment, failing which Seth A. Walters of Saunders & Silverstein LLP will be deemed the lead counsel.² See TBMP §511. After the lead counsel has been appointed for postal correspondence, the Board will send a copy of any Board order, decision, or other communication to plaintiff’s lead counsel and to the Applicant’s counsel. Lead counsel in turn will be responsible for making and distributing postal copies of such Board correspondence to each plaintiff or its attorney. In these cases, the lead counsel is not substituted for the

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.

² Mr. Silverstein being the counsel for two of the three Opposers already.

separate counsel of each plaintiff, but rather is responsible for coordinating the conduct of the plaintiffs' cases. However, by designating more than one email address (separated by commas, up to a limit of 800 characters) for receipt of notice of Board actions, all representatives may receive electronic correspondence from the Board. TBMP §117.02. Upon completion of this requirement by Opposers the Board will reset dates for this now consolidated proceeding.³

Proceedings herein otherwise remain suspended.

³ The joint motion for a 90-day extension, filed in each opposition, is moot.