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

Proceeding no.	91292031
Party	Defendant The HER Effect LLC
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Submission	Motion to Consolidate
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Trademark: THE ALCHEMY CODE, Serial No. 98/066,763

CBx Enterprises LLC, and Trulieve, Inc.,

Opposer,

v.

The HER Effect LLC,

Applicant.

Opposition No. 91286107

Opposition No. 91292031

CONTESTED MOTION TO CONSOLIDATE

The HER Effect LLC (“**Applicant**”), hereby moves, pursuant to Federal Rule of Civil Procedure 42(a) and TBMP § 511, and without the consent of CBx Enterprises LLC, and Trulieve, Inc. (collectively, “**Opposer**”) to consolidate the two above-captioned opposition proceedings.¹ Opposer further requests that the consolidated proceeding follow the case schedule of proceeding no. 91292031 to give the parties sufficient time to conduct any additional and/or new discovery.

The Board may order consolidation when the cases involve common questions of law or fact. *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 U.S.P.Q.2d 1382 (T.T.A.B. 1991). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense that may be gained from consolidation, against any prejudice or inconvenience that may be caused thereby. TBMP § 511. *See also, e.g., World Hockey Ass’n v. Tudor Med. Prods. Corp.*, 185 U.S.P.Q. 246, 248 (T.T.A.B. 1975).

¹ Applicant sent this Motion to Opposer’s counsel, Jeremy Kapteyn, on June 24, 2024, for his review and feedback, as well as a confirmation whether Opposer consented to or opposed the Motion. Mr. Kapteyn never responded; therefore, Applicant assumes the Motion is opposed.

Consolidation of the two opposition proceedings is appropriate here because the two proceedings present common questions of law and fact. The parties are the same, the grounds for opposition are substantially the same; the marks at issue are the same; the legal issues are the same – priority of use and likelihood of confusion; and the pleadings are virtually identical. *See M.C.I. Foods Inc. v. Bunte*, 86 U.S.P.Q.2d 1044, 1046 (T.T.A.B. 2008) (proceeding involved identical parties, identical registrations and related issues); *S. Industries Inc. v. Lamb-Weston Inc.*, 45 U.S.P.Q.2d 1293, 1297 (T.T.A.B. 1997) (both proceedings involved the same mark and virtually identical pleadings); *Ritchie v. Simpson*, 41 U.S.P.Q.2d 1859, 1860 (T.T.A.B. 1996) (cases consolidated despite variations in marks and goods), *rev'd on other grounds*, 170 F.3d 1092 (Fed. Cir. 1999). Accordingly, consolidation would prevent unnecessary, piecemeal litigation and yield substantial savings in time, effort, and expense for both parties and the Board.

Further, consolidation will not prejudice or inconvenience either party. Although the subject opposition proceedings were filed at different times, they are both at early stages due to a motion for summary judgment prior to the close of discovery filed by Applicant in Opposition No. 91286107 (which was decided on June 20, 2024) during which period discovery was stayed. Accordingly, the parties can coordinate discovery in both proceedings, since the witnesses and documentary evidence will be substantially the same, and thereby avoid duplication of effort, time and expense. The consolidation will be “advantageous to both parties in the avoidance of the duplication of effort, loss of time, and the extra expense involved in conducting the proceedings [separately].” *World Hockey Ass’n*, 185 U.S.P.Q. at 248. Although Opposer has not consented to this Motion, consolidation here would conserve the resources of both parties by preventing duplicative discovery, while furthering the Board’s interest in an efficient and economical resolution of both matters.

Based on the foregoing, Applicant respectfully requests that this Contested Motion to

Consolidate be granted and the consolidated proceeding follow the case schedule of proceeding No.
91292031.

Respectfully submitted,

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Date: July 9, 2024

CERTIFICATE OF TRANSMITTAL AND ELECTRONIC SERVICE

I hereby certify that this Contested Motion to Consolidate is being electronically transmitted in PDF format to the United States Patent and Trademark Office Trademark Trial and Appeal Board through the Electronic Systems for Trademark Trial and Appeals on the date indicated below.

I hereby further certify that on the date indicated below, a true and correct copy of this Contested Motion to Consolidate sent via electronic correspondence, addressed to the Opposer listed in the United States Patent and Trademark Office online database, as follows:

CBx Enterprises LLC
Trulieve, Inc.
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Dated: July 9, 2024

/Danette L. R. Lilja/
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