

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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JV/ADH

June 29, 2024

Opposition No. 91287091
Cancellation No. 92084919

Big Heart Pet, Inc.

v.

Spectrum Brands Pet LLC

Ashley D. Hayes, Interlocutory Attorney:

On June 14, 2024, Opposer filed the parties' stipulated motion to consolidate this proceeding with Cancellation No. 92084919, in which Opposer is the Petitioner and Applicant is the Respondent.

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); *see also Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154, 1156 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382, 1384 n.3 (TTAB 1991). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense which may be gained from consolidation, against any prejudice or inconvenience which may be caused thereby. *See* TBMP § 511.

Opposition No. 91287091 and Cancellation No. 92084919 involve the same parties and present common questions of law and fact. For example, Opposer/Petitioner

alleges claims of likelihood of confusion and dilution in both proceedings and the majority of the pleaded registrations upon which Opposer/Petitioner relies are the same in both proceedings. Moreover, the marks in the involved application and registration share the common element MEOWEE!. Notwithstanding the different procedural posture of the cases, the parties have stipulated to the consolidation. In view of the foregoing the Board finds consolidation appropriate. *See* Fed. R. Civ. P. 42(a). Accordingly, the Board exercises its discretion to consolidate Opposition No. 91287091 and Cancellation No. 92084919. *See Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1619 n.1 (TTAB 1989) (stipulation to consolidate opposition and cancellation proceedings). These cases may be presented on the same record and briefs. *Id.*; *see also Hilson Rsch. Inc. v. Society for Human Res. Mgmt.*, 27 USPQ2d 1423, 1424 n.1 (TTAB 1993).

The Board file will be maintained in Opposition No. 91287091 as the “parent” case. From this point on, with the exception of the pleadings, only a single copy of each paper should be filed by the parties in the parent case, but the caption should contain all consolidated proceeding numbers, listing 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 and a copy of the decision shall be placed in each proceeding file.

Finally, it is the Board's practice to reset conference, disclosure, discovery and trial dates for consolidated proceedings in accordance with the most recently instituted of the consolidated cases. Accordingly, dates are **RESET** as follows:

Initial Disclosures Due (Cancellation No. 92084919 Only) ¹	7/21/2024
Expert Disclosures Due	11/18/2024
Discovery Closes	12/18/2024
Plaintiff's Pretrial Disclosures Due	2/1/2025
Plaintiff's 30-day Trial Period Ends	3/18/2025
Defendant's Pretrial Disclosures Due	4/2/2025
Defendant's 30-day Trial Period Ends	5/17/2025
Plaintiff's Rebuttal Disclosures Due	6/1/2025
Plaintiff's 15-day Rebuttal Period Ends	7/1/2025
Plaintiff's Opening Brief Due	8/30/2025
Defendant's Brief Due	9/29/2025
Plaintiff's Reply Brief Due	10/14/2025
Request for Oral Hearing (optional) Due	10/24/2025

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, 37 C.F.R. §§ 2.121-2.125. 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.

¹ The Board presumes the parties already exchanged initial disclosures in the parent proceeding inasmuch as the date therefor has passed.

Opposition No. 91287091 and Cancellation No. 92084919

Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 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), 37 C.F.R. § 2.129(a).