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

Proceeding no.	91287334
Party	Plaintiff Liberty Truck Center, Inc. d/b/a Onvo
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Date	02/09/2024
Attachments	Motion to Consolidate Opposition Proceedings - Not Consented.pdf(156134 bytes)

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

LIBERTY TRUCK CENTER, INC.,)	
)	
Opposer,	)	Opposition No.: 91286871
	)	Serial No.: 97353420
v.	)	Mark: ONVO
)	
NIO CO. LTD.,)	
)	
Applicant.)	
)	

LIBERTY TRUCK CENTER, INC.,)	
)	
Opposer,	)	Opposition No.: 91287045
	)	Serial No.: 97353445
v.	)	Mark: ONVO
)	
NIO CO. LTD.,)	
)	
Applicant.)	
)	

LIBERTY TRUCK CENTER, INC.,)	
)	
Opposer,	)	Opposition No.: 91287118
	)	Serial No.: 97976153
v.	)	Mark: ONVO
)	
NIO CO. LTD.,)	
)	
Applicant.)	
)	

LIBERTY TRUCK CENTER, INC.,)	
)	
Opposer,	)	Opposition No.: 91287169
	)	Serial No.: 97354315
v.	)	Mark: ONVO
)	
NIO CO. LTD.,)	
)	
Applicant.)	
)	

LIBERTY TRUCK CENTER, INC.,)
)
Opposer,) Opposition No.: 91287334
) Serial No.: 97354301
v.) Mark: ONVO
)
NIO CO. LTD.,)
)
Applicant.)
)

LIBERTY TRUCK CENTER, INC.,)
)
Opposer,) Opposition No.: 91288221
) Serial No.: 97354138
v.) Mark: ONVO
)
NIO CO. LTD.,)
)
Applicant.)
)

LIBERTY TRUCK CENTER, INC.,)
)
Opposer,) Opposition No.: 91288568
) Serial No.: 97354129
v.) Mark: ONVO
)
NIO CO. LTD.,)
)
Applicant.)
)

LIBERTY TRUCK CENTER, INC.,)
)
Opposer,) Opposition No.: 91289239
) Serial No.: 97353458
v.) Mark: ONVO
)
NIO CO. LTD.,)
)
Applicant.)
)

**OPPOSER LIBERTY TRUCK CENTER, INC.’S MOTION TO CONSOLIDATE
PROCEEDINGS**

Opposer Liberty Truck Center, Inc. d/b/a ONVO (“Opposer”) hereby moves to consolidate Opposition Nos. 91288221, 91286871, 91287169, 91287334, 91287045, 91288568, 91287118, and 91289239 (collectively the “Oppositions”). Counsel for Opposer contacted counsel for Nio Co. Ltd. (“Applicant”) several times concerning filing a consented motion to consolidate proceedings in these matters; counsel for Applicant has not responded to consent or oppose this motion.

The Oppositions involve identical parties, identical marks, and similar and related claims with substantially similar questions of law and fact. The Oppositions were brought against applications for the word mark ONVO (U.S. Ser. Nos. 97354138, 97353420, 97354315, 97354301, 97353445, 97354129, 97976153, and 97353458) owned by Applicant (collectively “Applicant’s Proposed Marks”). Opposer filed the Oppositions on the grounds of likelihood of confusion with its prior registered ONVO marks (wordmarks U.S. Reg. Nos. 88319722 and 90075508, and stylized U.S. Reg. No. 90301462) (collectively “Opposer’s Marks”). Both Applicant’s Proposed Marks and Opposer’s Marks concern a variety of classes of goods and services, with overlapping classes between Applicant’s Proposed Marks and Opposer’s Marks. As explained more fully below, consolidation of the Oppositions will avoid duplication of discovery, hearings, filings, and more, saving the parties and the Board time, effort, and expense. Therefore, Opposer seeks the Board’s approval to consolidate the oppositions.

When cases involving common questions of law or fact are pending before the Trademark Trial and Appeal Board (“Board”), the Board may order consolidation of the cases. *See* TBMP § 511; Fed. R. Civ. P. 42(a); *M.C.I. Foods Inc. v. Bunte*, 86 USPQ2d 1044, 1046 (TTAB 2008)

(Precedential Opinion) (proceeding involved identical parties, identical registrations, and related issues). The Board has the discretion to order consolidation upon (1) motion granted by the Board, (2) stipulation of the parties approved by the Board, or (3) the Board's own initiative. *See, e.g., Wisconsin Cheese Grp., LLC v. Comercializadora de Lacteos y Derivados S.A. de C.V.*, 118 USPQ2d 1262, 1264 (TTAB 2016) (Precedential Opinion) (motion to consolidate granted). The Board has ordered consolidation when it "would be equally advantageous to both parties in the avoidance of the duplication of effort, loss of time, and the extra expense involved in conducting the proceedings alternately." *World Hockey Ass'n v. Tudor Metal Prods. Corp.*, 185 USPQ 246, *3 (TTAB Mar. 25, 1975) (marks involved were substantially similar, so proceedings may be presented on the same record without appreciable inconvenience or confusion).

Cases can be consolidated despite variations in marks and goods involved. *Ritchie v. Simpson*, 41 USPQ2d 1859, 1860 (TTAB 1996), *rev'd on other grounds*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999). 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 Dating DNA LLC v. Imagini Holdings Ltd.*, 94 USPQ2d 1889, 1893 (TTAB 2010) (Non-Precedential Opinion) (motion to consolidate granted; consolidated cases may be presented on the same record and briefs); *Indus. Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293, 1297 (TTAB 1997) (both proceedings involved the same mark and virtually identical pleadings).

The Oppositions involve the same questions of law and fact. The marks subject to the Oppositions are identical in their dominant elements. If a mark consists of both words and a design, greater weight is often given to the words as the dominant element, as they are likely to "make a greater impression upon purchasers, to be remembered by them, and to be used by them to request

the goods.” *Aquitaine Wine* 126 U.S.P.Q.2d at *2 (TTAB 2018) (Precedential Opinion) (despite mark including design element, word was dominant element, given large bold typeface and emphasis in size and positioning within the mark); *see also In re Denisi*, 225 USPQ 624, at *1 (TTAB Mar. 8, 1985) (“If the dominant portion of both marks is the same, then confusion may be likely notwithstanding peripheral differences.”) All of Applicant’s Proposed Marks are for the wordform “ONVO”, while two of Opposer’s Marks are for the wordmark “ONVO” and the third (U.S. Reg. No. 90301462) is for a stylized mark of the word “ONVO”.¹ However, the stylized mark’s dominant element is the word “ONVO”, given its larger, emphasized typeface style and size. As such, the Opposer’s and Applicant’s marks are identical.

In all Oppositions, Opposer’s basis for its opposition is its use and registration of the ONVO Marks for goods and services in international classes 18, 21, 25, 30, 32, 35, 39, 42, and 44. The opposed Proposed Marks are all ONVO wordmarks for goods and services in international classes 12, 22, 25, 28, 35, 37, 40, and 42. “An opposer can block a trademark application in full by proving priority of use and likelihood of confusion for *any* of the services listed in the trademark application.” *Bertini v. Apple Inc.*, 63 F.4th 1373, 1379 (Fed. Cir. 2023) (emphasis in original). Furthermore, if the mark used by the applicant is so similar to the use of the mark by the opposer for even a single product that the opposer has established prior rights to, there is likely to be confusion as to their source. *SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 1041 (Fed. Cir. 1983). As discussed above, Opposer’s Marks and Applicant’s Proposed Marks are identical in their dominant elements; as such, there must only be one good or service that is similar enough to lead to a



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likelihood of confusion in each Opposition between the numerous goods and services listed in each of Opposer's registrations and Applicant's applications. Furthermore, as in *Ritchie*, the Oppositions can be consolidated despite differences in goods or services. Ultimately, the basis for opposition is identical in all of the Oppositions (likelihood of confusion), so their legal issues are similar and related, despite any differences in goods or services.

The Oppositions therefore share identical marks for similar goods and identical parties, making the factual issues between all Oppositions similar and related. The Answers have been filed in all matters and thus, the issues are joined in all of the proceedings. Given the factual and legal overlap between the Oppositions, the Oppositions are all likely to have similar discovery sought by the parties, which will have to be duplicated across multiple oppositions if consolidation is not ordered. If ordered, consolidation would be advantageous to both parties, as in *World Hockey*; without consolidation, these Oppositions would incur duplicative efforts, lost time, and extra expenses for both parties to conduct the same discovery and proceedings across numerous Oppositions. Furthermore, as in *Industries*, the pleadings are highly similar across the Oppositions, so consolidation should be granted. Compare Opposer's Notices of Opposition, Applicant's Answer in Opposition Nos. 91288221, 91286871, 91287169, 91287334, 91287045, 91288568, 91287118, and 91289239. Finally, Applicant has not yet indicated any opposition to a motion to consolidate and has not yet argued that it will face any prejudice or inconvenience that outweighs the savings in time, effort, and expense to be gained by both parties from consolidation. Thus, because the parties are the same, the marks at-issue are the same, the facts relevant to the Oppositions are likely to be similar, the legal issues in the Oppositions are the same, and the matters are joined, the Board should consolidate these matters to save time, effort, and expense for both parties and the Board.

Typically, when consolidating Trademark Trial and Appeal Board proceedings, the Board will issue a scheduling order that follows the latest schedule in the “child” or most recently instituted case. *See Dating DNA LLC v. Imagini Holdings Ltd.*, 94 USPQ2d 1889, 1893 (TTAB 2010) (Non-Precedential Opinion). The Board typically mandates that filings should be maintained in the “parent case,” or the lowest numbered opposition of the consolidated cases. *See Wise F&I, LLC v. Allstate Ins. Co.*, 120 U.S.P.Q.2d 1103 (TTAB 2016) (Precedential Opinion) (requiring only a single copy of all motions and papers to be filed in the “parent case” only, but captioning all consolidated proceeding numbers, listing the “parent case” first). Here, the Board file should be maintained in Opposition No. 91286871 as the “parent case,” in which the single copy of all motions and papers should be filed. The schedule in the most recently instituted “child case,” which should be adopted for the consolidated matter, is as follows:

Deadline for Discovery Conference	3/27/2024
Discovery Opens	3/27/2024
Initial Disclosures Due	4/26/2024
Expert Disclosures Due	8/24/2024
Discovery Closes	9/23/2024
Plaintiff’s Pretrial Disclosures Due	11/7/2024
Plaintiff’s 30-day Trial Period Ends	12/22/2024
Defendant’s Pretrial Disclosures Due	1/6/2025
Defendant’s 30-day Trial Period Ends	2/20/2025
Plaintiff’s Rebuttal Disclosures Due	3/7/2025
Plaintiff’s 15-day Rebuttal Period Ends	4/6/2025
Plaintiff’s Opening Brief Due	6/5/2025

Defendant's Brief Due **7/5/2025**

Plaintiff's Reply Brief Due **7/20/2025**

Request for Oral Hearing (optional) Due **7/30/2025**

See Opposition No. 91289239, 2 TTABVUE 3. Answers have already been filed in each of the oppositions to be consolidated. The parties have conducted a discovery conference in each of the oppositions to be consolidated, except for the most recently filed Opposition No. 91289239. Initial disclosures and written discovery have been exchanged in some oppositions. However, given the number of consolidated oppositions, counsel for Opposer has proposed (and counsel for Applicant has not responded despite Opposer's counsel following up) a higher number of written discovery requests (up to 75 interrogatories, 500 requests for admission, and 500 requests for production), while limiting the number of depositions to the standard 10 per party; this proposed change to the discovery parameters may limit any potential prejudice or inconvenience that may be incurred through consolidation of so many Oppositions. Accordingly, this motion requests a variance of discovery limitations as follows: each party may serve a total of 75 interrogatories, 500 requests for admission, and 500 requests for production; the allowed number of depositions shall remain at the standard 10 per party.

Opposer respectfully requests that the Board adopt the above referenced schedule and discovery parameters for the consolidated proceeding.

In conclusion, the Oppositions involve identical parties, identical marks, similar and related issues of law and fact. The legal issues and facts underlying the Oppositions are so similar that separate proceedings would be wholly repetitive. Consolidating the proceedings would be advantageous to both parties and significantly reduce the time, expense, and effort the parties would need to expend to resolve, and the Board would need to decide, the underlying disputes.

Therefore, Opposer hereby moves that Opposition Nos. 91288221, 91286871, 91287169, 91287334, 91287045, 91288568, 91287118, and 91289239 be consolidated,. Opposer also moves for the Board to adopt the above-referenced schedule and expanded discovery parameters for the consolidated proceeding.

Dated: February 9, 2024

Respectfully submitted,

/s/ Scott M. Douglass
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I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED THROUGH THE ELECTRONIC SYSTEM FOR TRADEMARK TRIAL AND APPEALS IN THE UNITED STATES PATENT AND TRADEMARK OFFICE.

By: /s/ Scott M. Douglass

Date: February 9, 2024

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2024, this document OPPOSER LIBERTY TRUCK CENTER, INC.'S MOTION TO CONSOLIDATE PROCEEDINGS was served via email to counsel for Applicant as set forth below:

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