

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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KGC

January 24, 2024

Opposition No. 91272072 (parent)
Opposition No. 91283229
Opposition No. 91288558
Opposition No. 91288641¹

Kueski, S.A.P.I. DE C.V., SOFOM, E.N.R.

v.

Llapingacho LLC

Kevin G. Crennan, Interlocutory Attorney:

Consolidation

When proceedings involving common questions of law or fact are pending before the Board, consolidation may be ordered upon the Board's initiative. *See* Fed. R. Civ. P. 42(a); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 511 (2023). Consolidation is discretionary with the Board. *See, e.g., Wis. Cheese Grp., LLC v. Comercializadora de Lácteos y Derivados, S.A. de C.V.*, 118 USPQ2d 1262, 1264 (TTAB 2016). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense that may be gained from consolidation

¹ Applicant's counsel's notices of appearance in Opposition Nos. 91288558 and 91288641 are noted, and the Board's records in those proceedings have been updated accordingly. 4 TTABVUE in Opp. Nos. 91288558 & 91288641.

Opposition Nos. 91272072 (parent), 91283229, 91288558, and 91288641

against any prejudice or inconvenience that may be caused thereby. *See id.*; *World Hockey Ass'n v. Tudor Metal Prods. Corp.*, 185 USPQ 246, 248 (TTAB 1975); *see also* TBMP § 511.

A review of Opposition Nos. 91272072, 91283229, 91288558, and 91288641 reveals that consolidation is appropriate. Specifically, and at a minimum, the parties and pleaded registrations are identical; the involved marks share the same wording KUSHKI; and one of the grounds for opposition (likelihood of confusion) overlaps. In addition, the proceedings are in similar early procedural postures: either in discovery or pre-discovery.

In view thereof, and in the Board's discretion, Opposition Nos. 91272072, 91283229, 91288558, and 91288641 are hereby **consolidated** and may be presented on the same record and briefs.² *See, e.g., Wis. Cheese Grp.*, 118 USPQ2d at 1264 (citing *Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1619 n.1 (TTAB 1989)).

The Board file will be maintained in Opposition No. 91272072 designated as the "parent." From this point on, except as discussed below, the parties are directed to file a copy of all motions and submissions in the parent case only, and caption all consolidated proceeding numbers, listing and identifying the "parent" first (as in the caption of this order).

² Opposition Nos. 91272072 and 91283229 were previously consolidated. 20 TTABVUE in Opp. No. 91272072.

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.

Answer to Counterclaim in Opposition No. 91288641 Due

On January 16, 2024, Applicant filed an answer to the notice of opposition in Opposition No. 91288641 and a counterclaim to cancel Opposer’s pleaded Registration Nos. 6000277, 6352536, 6352537, and 6565422. 5 TTABVUE in Opp. No. 91288641. Applicant submitted the required fee.

Opposer and counterclaim-defendant, Kueski, S.A.P.I. DE C.V., SOFOM, E.N.R., is **allowed** in accordance with the below schedule to file an answer to the counterclaim.³ See Trademark Rule 2.106(b)(3)(iii). Any answer must be filed only in Opposition No. 91288641. Thereafter, once pleadings close in Opposition No. 91288641, as discussed, the parties are directed to file a copy of all motions and submissions in the parent case only, Opposition No. 91272072.

In accordance with the Trademark Rules of Practice, the parties’ obligation to hold their discovery conference by the deadline stated in the prior order is **stayed**, and conferencing, disclosure, discovery and trial periods are **reset** as indicated below. See Trademark Rule 2.121(b)(2).

Answer to Counterclaim Due	2/23/2024
Deadline for Discovery Conference	3/24/2024

³ This schedule is the operative schedule for this consolidated proceeding. See TBMP § 511 (“Upon consolidation, the Board will reset dates for the consolidated proceeding, usually by adopting the dates as set in the most recently instituted of the cases being consolidated.”).

Discovery Opens	3/24/2024
Initial Disclosures Due	4/23/2024
Expert Disclosures Due	8/21/2024
Discovery Closes	9/20/2024
Pretrial Disclosures Due for Party in Position of Plaintiff in Original Claim	11/4/2024
30-day Trial Period Ends for Party in Position of Plaintiff in Original Claim	12/19/2024
Pretrial Disclosures Due for Party in Position of Defendant in Original Claim and in Position of Plaintiff in Counterclaim	1/3/2025
30-day Trial Period Ends for Party in Position of Defendant in Original Claim, and in Position of Plaintiff in Counterclaim	2/17/2025
Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Original Claim and in Position of Defendant in Counterclaim	3/4/2025
30-day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Original Claim, and in Position of Defendant in Counterclaim	4/18/2025
Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Counterclaim	5/3/2025
15-day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Counterclaim	6/2/2025
Opening Brief for Party in Position of Plaintiff in Original Claim Due	8/1/2025
Combined Brief for Party in Position of Defendant in Original Claim and Opening Brief as Plaintiff in Counterclaim Due	8/31/2025
Combined Rebuttal Brief for Party in Position of Plaintiff in Original Claim and Brief as Defendant in Counterclaim Due	9/30/2025
Rebuttal Brief for Party in Position of Plaintiff in Counterclaim Due	10/15/2025
Request for Oral Hearing (optional) Due	10/25/2025

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. 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). Such briefs should utilize citations to the TTABVUE record created during trial, to facilitate the Board's review of the evidence at final hearing. *See* TBMP § 801.03. 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 – 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.⁴ 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.

⁴ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.