

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Baxley

Mailed: December 14, 2004

Cancellation No. 92032958

TANGO CHIX PRODUCTIONS, INC.

v.

OLIVE INDUSTRIES, LTD.

Cancellation No. 92043001

Cancellation No. 92043008

OLIVE INDUSTRIES, LTD.

v.

TANGO CHIX PRODUCTIONS, INC.

(as consolidated)

Andrew P. Baxley, Interlocutory Attorney:

On November 4, 2004, Olive Industries, Ltd. ("Olive") filed the following: (1) a combined motion for leave to supplement its answer in Cancellation No. 92032958 and for entry of monetary sanctions against Tango Chix Productions, Inc. ("Tango Chix") for alleged attorney misconduct; (2) a motion to consolidate the above-referenced proceedings; (3) a combined motion for leave to supplement its petition to cancel in Cancellation Nos. 92043001 and 92043008 and for entry of monetary sanctions against Tango Chix Productions, Inc. ("Tango Chix") for alleged attorney misconduct. Tango Chix filed a brief in response to Olive's motions.

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In view of Tango Chix's statement that it consents to Olive's motions for leave to supplement its pleadings herein to the extent that such motions are pursuant to Fed. R. Civ. P. 15(a), those motions are granted.¹ The first amended answer is accepted and made of record as Olive's operative pleading in Cancellation No. 92032958. The first amended petitions to cancel are accepted and made of record as Olive's operative pleadings in Cancellation Nos. 92043001 and 92043008. Tango Chix is allowed until **thirty days** from the mailing date of this order to file a separate answer to the first amended petitions to cancel in Cancellation Nos. 92043001 and 92043008.

In view of Tango Chix's statement that it does not oppose Olive's motion to consolidate, that motion is hereby granted as conceded. See Trademark Rule 2.127(a). The Board hereby orders the consolidation of the above-referenced proceedings inasmuch as the parties are the same, and the proceedings involve common questions of law or

¹ In the Board's September 3, 2004 order herein, the Board vacated its entry of default judgment against Olive in Cancellation No. 92032958 in part under Fed. R. Civ. P. 60(b)(3) due to Tango Chix's misconduct in failing to comply with Trademark Rule 2.112(a) with regard to the address for Olive that it set forth in the petition to cancel therein. However, contrary to Olive's assertion, the Board did not find that such misconduct was fraudulent. Accordingly, Olive's references to the vacating of the default judgment under Rule 60(b)(3) as "the Fraud Determination" are inappropriate and should be avoided.

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fact.² In view thereof, Cancellation Nos. 92032958, 92043001, and 92043008 are hereby consolidated.

The consolidated cases may be presented on the same record and briefs. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989) and *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993). The Board filed will be maintained in Cancellation No. 92032958 as the "parent" case. As a general rule, from this point on only a single copy of any paper or motion should be filed herein; but that copy should bear all three proceeding numbers in its caption. Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleading; a copy of the decision shall be placed in each proceeding file.

With regard to Olive's motions for monetary sanctions, however, Tango Chix correctly notes that the Board cannot award attorneys' fees or other expenses to any party under any circumstances.³ See Trademark Rule 2.127(a).

² When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. See Fed. R. Civ. P. 42(a); see also *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991) and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991).

³ In any event, Olive's motion is not well-taken. Although the Board strongly encourages cooperation between parties and their attorneys, Tango Chix was under no obligation to stipulate to

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Accordingly, Olive's motions for monetary sanctions are hereby denied.

Discovery and trial dates are reset as follows.

THE PERIOD FOR DISCOVERY TO CLOSE:	3/4/05
30-day testimony period for Tango Chix as plaintiff In Cancellation No. 92032958 to close:	6/2/05
30-day testimony period for Olive as defendant in Cancellation No. 92032958 and as plaintiff in Cancellation Nos. 92043001 and 92043008 to close:	8/1/05
30-day testimony period for Tango Chix as defendant in Cancellation Nos. 92043001 and 92043008 and its rebuttal testimony as plaintiff in Cancellation Nos. 92032958 to close:	9/30/05
15-day rebuttal testimony period for Olive in the Cancellation Nos. 92043001 and 92043008 to close:	11/14/05
Briefs shall be due as follows: [See Trademark rule 2.128(a)(2)].	
Brief for Tango Chix in Cancellation No. 92032958 shall be due:	1/13/06
Brief for Olive as defendant in Cancellation No. 92032958 and as Plaintiff in Cancellation Nos. 92043001 and 92043008 shall be due:	2/12/06
Brief for Tango Chix as defendant in Cancellation Nos. 92043001 and 92043008 and its reply brief (if any) as plaintiff in Cancellation No. 92032958 shall be due:	3/14/06
Reply brief (if any) for Olive in Cancellation Nos. 92043001 and 92043008 shall be due:	3/29/06

Olive's motions to supplement its pleadings and to consolidate the above-captioned proceedings.

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In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.