

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: August 20, 2002

Opposition No. 91151496
Cancellation No. 92040380

SPEEDWAY SUPERAMERICA LLC

v.

SPEEDWAY MOTORS, INC.

David Mermelstein, Attorney:

Now before the Board is applicant's motion, filed in Opp. No. 91151496 on August 1, 2001, for an extension of time to answer, and to suspend this matter in view of the parties' settlement discussions.

Motion to Extend Time to Answer

Because applicant's answer was due on June 12, 2002, we construe applicant's motion to extend as a motion to discharge its default in this proceeding. In light of the apparent agreement of the parties, the relatively short delay involved, and applicant's apparent intention to defend this matter, applicant's technical default is discharged.

Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc., 21 USPQ2d 1556 (TTAB 1991).

Consolidation

Applicant further indicates that, on May 28, 2002, it filed a motion to consolidate this proceeding with Cancellation No. 92040380. Although the Board's records do not indicate receipt of such a motion in either proceeding file, it nonetheless appears adequately to the Board that the two proceedings involve common issues of law and fact, and that consolidation is appropriate. See Trademark Rule Fed. R. Civ. P. 42; TBMP § 511. Accordingly, the Board orders that Opposition No. 91151496 and Cancellation No. 92040380 are hereby consolidated and that they may be presented on the same record and briefs. See Fed. R. Civ. P. 42(a); TBMP § 511, *citing Izod, Ltd. v. La Chemise Lacoste*, 178 USPQ 440 (TTAB 1970). From this date forward, Opposition No. 91151496 is designated the "parent" case in which all papers shall be filed. Every paper filed must henceforth reference all proceeding numbers as shown in the caption of this order.¹

Proceedings Suspended; Automatically to Resume in 6 Months

Finally, further proceedings in this consolidated case are SUSPENDED for six months from the mailing date of this order in light of the parties' settlement negotiations,

¹ The parties should promptly inform the Board in writing of any other related *inter partes* proceedings. See Fed. R. Civ. P. 42(a).

subject to the right of either party to resume proceedings at any time.

At the end of the suspension period, proceedings shall automatically resume without further order or notice from the Board, upon the schedule set out below.

Trial dates, including the close of discovery, are reset as follows:

Proceedings Resume:	February 13, 2003
Applicant's answer and both parties' responses to outstanding discovery due:	March 15, 2003
DISCOVERY PERIOD TO CLOSE:	June 23, 2003
Thirty day testimony period for party in position of plaintiff to close:	September 21, 2003
Thirty day testimony period for party in position of defendant to close:	November 20, 2003
Fifteen day rebuttal testimony period to close:	January 4, 2004

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.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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