

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

Baxley

Mailed: December 4, 2007

Opposition No. 91179079

Nature's Way Products, Inc.

v.

Premier Alive, Inc.

Cancellation No. 92047568

A-Live Foods, Inc. and Premier
Alive, Inc. (joined as party
plaintiff)

v.

Nature's Way Products, Inc.

Andrew P. Baxley, Interlocutory Attorney:

On November 21, 2007, Premier Alive, Inc. ("Premier") filed a motion to be joined or substituted as the party plaintiff in the above-captioned cancellation proceeding. A copy of a document reflecting the assignment from A-Live Foods, Inc. ("A-Live") to Premier of the pleaded marks in that proceeding is included as an exhibit to that motion. Inasmuch as the assignment in question occurred after the commencement of the above-captioned cancellation proceeding, the motion to join or substitute is granted to the extent that Premier is joined as a party plaintiff in that proceeding. See TBMP Section 512 (2d ed. rev. 2004).

Opposition No. 91179079 and Cancellation No. 92047865

Inasmuch as the above-captioned proceedings involve both the same parties and common questions of law or fact, A-Live's and Premier's concurrently filed motion to consolidate the above-captioned proceedings is granted as well-taken. See Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991); TBMP Section 511 (2d ed. rev. 2004). The Board hereby orders the consolidation of the above-referenced proceedings.

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 Opposition No. 91179079 as the "parent" case. As a general rule, from this point onward, only a single copy of any submission should be filed herein; but that copy should include both 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.

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In keeping with Board practice, the Board adopts the closing date of the discovery period in Opposition No. 91179079, the most recently instituted of these consolidated proceedings, as closing date for the discovery period in these consolidated proceedings. Inasmuch as Cancellation No. 92047568 is the equivalent of a counterclaim in these consolidated proceedings, discovery and testimony periods herein are reset as follows.

THE PERIOD FOR DISCOVERY TO CLOSE: March 9, 2008

30-day testimony period for plaintiff in the opposition to close: June 7, 2008

30-day testimony period for defendant in the opposition and as plaintiff in the cancellation to close: August 6, 2008

30-day testimony period for defendant in the cancellation and its rebuttal testimony as plaintiff in the opposition to close: October 5, 2008

15-day rebuttal testimony period for plaintiff in the cancellation to close: November 19, 2008

Briefs shall be due as follows:
[See Trademark rule 2.128(a)(2)].

Brief for plaintiff in the opposition shall be due: January 18, 2009

Brief for defendant in the opposition and as plaintiff in the cancellation shall be due: February 17, 2009

Brief for defendant in the cancellation and its reply brief (if any) as plaintiff in the opposition shall be due: March 19, 2009

Reply brief (if any) for plaintiff in the

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cancellation shall be due:

April 3, 2009

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.