

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

Mailed: August 6, 2008

Cancellation No. 92049331

Cancellation No. 92049337

JOHNSON & JOHNSON

v.

VITACOST.COM, INC.

**Cheryl Butler, Attorney, Trademark Trial and Appeal Board:**

Cancellation No. 92049331 and Cancellation No. 92049337 each commenced on May 12, 2008. The institution orders were sent out on the same day. On May 27, 2008, the institution order for Cancellation No. 92049331 was returned as undeliverable. On June 9, 2008, the institution order for Cancellation No. 92049337 was returned as undeliverable. In the period between the undeliverable mail in each case, an updated institution order was sent in Cancellation No. 92049331 on June 12, 2008 and the correspondence address was updated to:

Vitacost.com, Inc.  
5400 Broken Sound Blvd., NW  
Boca Raton, FL 33487.

The Board now has reviewed each of the above-identified proceedings. Answers are not yet due.

When cases involving common questions of law or fact are pending before the Board, as here, consolidation of such cases

**Cancellation Nos. 92049331 and 92049337**

may be appropriate. Such consolidation may be ordered on the Board's own initiative. See Fed. R. Civ. P. 42(a); and TBMP §511 (2d ed. rev. 2004). In addition, the Board, in its discretion, may order cases consolidated prior to joinder of issue (*i.e.*, before an answer has been filed in each case). The Board finds it appropriate to consolidate the above-identified proceedings.

Accordingly, Cancellation Nos. 92049331 and 92049337 are hereby consolidated and may be presented on the same records and briefs. The record will be maintained in Cancellation No. **92049331** as the "parent" case, but all papers filed in these cases should include both proceeding numbers in ascending order.

Respondent, however, should file a separate answer to each cancellation proceeding; and respondent's answers to each proceeding are due as set below.

Time to Answer	9/1/2008
Deadline for Discovery Conference	10/1/2008
Discovery Opens	10/1/2008
Initial Disclosures Due	10/31/2008
Expert Disclosures Due	2/28/2009
Discovery Closes	3/30/2009
Plaintiff's Pretrial Disclosures	5/14/2009
Plaintiff's 30-day Trial Period Ends	6/28/2009
Defendant's Pretrial Disclosures	7/13/2009
Defendant's 30-day Trial Period Ends	8/27/2009
Plaintiff's Rebuttal Disclosures	9/11/2009
Plaintiff's 15-day Rebuttal Period Ends	10/11/2009

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.

Briefs shall be filed in accordance with 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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