

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

Mailed: January 28, 2009

Cancellation Nos. 92050302 (parent)
92050306
92050322

Fido Fence's Inc.

v.

Invisible Fence, Inc.

**Robert H. Coggins,
Interlocutory Attorney:**

It has come to the Board's attention that (1) there are three similar cancellation proceedings pending before the Board, (2) the notices instituting these proceedings were returned as undeliverable to the Board, and (3) the parties are engaged in a civil action.

Consolidation

Cancellation Nos. 92050302, 92050306, and 92050322 involve the same parties, similar marks, and common questions of law and fact. It would therefore be appropriate to consolidate these proceedings pursuant to Fed. R. Civ. P. 42(a).

Consolidation is discretionary with the Board, and may be ordered upon motion granted by the Board, or upon

stipulation of the parties approved by the Board, or upon the Board's own initiative. *See, for example, Wright & Miller, Federal Practice and Procedure: Civil* §2383 (2004); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991) (Board's initiative).

Accordingly, the above-noted cancellation proceedings are hereby consolidated and 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 1432 (TTAB 1993).

The Board file will be maintained in Cancellation No. 92050302 as the "parent" case. The parties should no longer file separate papers (except for the answers) in connection with each proceeding. Only a single copy of each paper should be filed by the parties in the parent case, and each paper should bear the case caption as set forth above. The only exception to this general rule is the filing of the answers by respondent. (However, as noted hereinbelow, respondent need not file its answers until the date for answering is reset.)

If the parties to these proceedings are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so

that the Board can consider further consolidation of proceedings.

Institution Orders

The notices instituting these proceedings and a copy of the petitions to cancel were forwarded to registrant but were returned by the Postal Service as undeliverable. The Office was advised on January 14, 2009, that service upon registrant could be effected and would be accepted when documents are mailed to:

R. Bradford Brittian
Pitts and Brittian PC
P.O. Box 51295
Knoxville TN 37950

Accordingly, the above notices, with enclosures, are remailed as indicated above. Generally, when such notices are remailed, it is the customary practice of the Board to reset respondent's time for filing an answer; however, because the parties are engaged in a civil action and the Board hereinbelow request information on that civil action, proceedings are suspended and respondent need not file its answers at this time. Respondent may wait until the time for filing the answers is reset by the Board after determination of the following issue.

Civil Action

It is the policy of the Board to suspend proceedings when a party or parties to the proceeding are involved in a

civil action that may be dispositive of or have a bearing on the Board case. See Trademark Rule 2.117(a).

In the petitions to cancel, petitioner references Civil Action No. 08-CV-754, styled *Fido's Fences v. The Canine Fence Company*, in the United States District Court for the Eastern District of New York. Petitioner is allowed thirty days from the mailing date of this order in which to submit to the Board a copy of the pleadings (complaint, answer, and counterclaim, if any) and a statement of the status of the civil action between the parties. The Board will review the pleadings and status of the civil action and determine whether the civil action may be dispositive of or have a bearing on the Board case. Proceedings are suspended pending a copy of the pleadings from petitioner.

If the parties to these consolidated proceedings are also parties to other civil actions involving the same or related marks, they should notify the Board immediately (and provide copies of the relevant pleadings), so that the Board can consider whether those civil actions may be dispositive of or have a bearing on the Board cases.

Summary

Proceedings are consolidated and suspended. The notices instituting these consolidated proceedings are remailed to respondent. Petitioner is allowed thirty days

in which to provide a copy of the pleadings and a statement of the status of Civil Action No. 08-CV-754.

NEWS FROM THE TTAB:

For faster handling of all papers, the TTAB strongly encourages electronic filing whenever possible. TTAB forms for electronic filings are available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABvue at <http://ttabvue.uspto.gov>.

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>