

**UNITED STATES PATENT AND
TRADEMARK OFFICE**
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: April 11, 2014

Cancellation No. 92058014
(Parent Case)
Cancellation No. 92058539

Valerie Cabanetos

v.

Wubbies World International
Incorporated

George C. Pologeorgis,
Interlocutory Attorney:

It has come to the Board's attention that the above-captioned cancellation proceedings involve common questions of law and fact and the parties are the same. 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).

Accordingly, the Board, *sua sponte*, orders the consolidation of the above-captioned proceedings.

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In view thereof, Cancellation Nos. 92058014 and 92058539 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 file for these consolidated cases will be maintained in Cancellation No. 92058014 as the "parent" case. As a general rule, from this point on only a single copy of any paper or motion should be filed in the parent case of the consolidated proceedings, but that copy should bear both opposition proceeding numbers in its caption. The only exception is that the answer to each petition to cancel must be filed in the respective corresponding proceeding.¹

The parties are further advised that 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 pleadings and a copy of the final decision shall be placed in each proceeding file.²

¹ The Board notes that respondent has already filed its answer in Cancellation No. 92058539 on February 27, 2014. Respondent has yet to file its answer in Cancellation No. 92058014. The Board further notes that respondent's correspondence address of record in Cancellation No. 92058014 is not current but the Board has nonetheless ascertained respondent's most current correspondence address and has updated the record in Cancellation No. 92058014 accordingly.

² The parties should promptly inform the Board in writing of any other related *inter partes* proceedings. See Fed. R. Civ. P. 42(a).

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In accordance with Board practice, discovery, disclosure and trial dates are reset to conform to the dates latest set in the proceedings that are being consolidated. In this instance, although filed first, Cancellation No. 92058014 has the latest set dates.

Accordingly, Cancellation No. 92058539 is hereby **suspended** until the deadline for respondent to file its answer in Cancellation No. 92058014, as provided below,³ at which time both cases will proceed simultaneously as consolidated proceedings pursuant to the following trial schedule:

Time to Answer in Cancellation No. 92058014	4/30/2014
Deadline for Discovery Conference	5/30/2014
Discovery Opens	5/30/2014
Initial Disclosures Due	6/29/2014
Expert Disclosures Due	10/27/2014
Discovery Closes	11/26/2014
Plaintiff's Pretrial Disclosures	1/10/2015
Plaintiff's 30-day Trial Period Ends	2/24/2015
Defendant's Pretrial Disclosures	3/11/2015
Defendant's 30-day Trial Period Ends	4/25/2015
Plaintiff's Rebuttal Disclosures	5/10/2015
Plaintiff's 15-day Rebuttal Period Ends	6/9/2015

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.

³ The Board has included a copy of petitioner's petition to cancel filed in Cancellation No. 92058014 with this order.

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

Pro Se Information for Respondent

It appears that respondent is representing himself. Respondent may do so. However, it should be noted that while Patent and Trademark Rule 11.14 permits any person to represent himself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in a Board proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. In addition, as the impartial decision maker, the Board may not provide legal advice, though it may provide information as to procedure. If respondent does not retain counsel, then respondent will have to familiarize himself with the rules governing this proceeding. Strict compliance with the Trademark Rules of Practice and all other applicable rules is expected of all parties, even those representing themselves.

Electronic Resources

Respondent may refer to the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice, both available on the Board's homepage at

<http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

The Board's homepage provides electronic access to these and other materials including the Board's standard protective order, answers to frequently asked questions, the ESTTA filing system⁴ (<http://estta.uspto.gov>) for Board filings, and TTABVUE (<http://ttabvue.uspto.gov/ttabvue>) for case status and prosecution history.

Service of Papers

The service requirements are set forth in Trademark Rule 2.119. Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board.

Consequently, copies of all papers⁵ which respondent may subsequently file in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. Strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

The Board will accept, as *prima facie* proof that a party filing a paper in a Board *inter partes* proceeding has served a copy of the paper upon every

⁴ Use of electronic filing with ESTTA is strongly encouraged. This electronic file system operates in real time. *See* TBMP § 110.09 (3d ed. rev. 2 2013).

⁵ The form of submissions is governed by Trademark Rule 2.126. *See* TBMP § 106.03 (3d ed. rev. 2 2013). Compliance with Trademark Rule 2.126 is required of respondent in all further papers filed with the Board.

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other party to the proceeding, a statement signed by the filing party, or by its attorney or other authorized representative, clearly stating the date and manner in which service was made. This written statement should take the form of a "Certificate of Service" which should read as follows:

The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon [insert name of party served] by forwarding said copy, via [insert manner of service (e.g., first class mail)], to: [insert name and address].

The certificate of service must be signed and dated. *See* TBMP § 113 (3d ed. rev. 2 2013).

Nature of Board Proceedings

Respondent is advised that an *inter partes* proceeding before the Board is similar to a civil action in a Federal district court. There are pleadings, a wide range of possible motions, discovery (a party's use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. The Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.

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Representation

As referenced above, respondent is strongly encouraged to obtain trademark counsel who is acquainted with the technicalities of the procedural and substantive law involved in Board proceedings.