

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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CME

January 24, 2019

Cancellation No. 92067794 (parent)

Cancellation No. 92069499

*Joshua S. Schoonover*

*v.*

*The Burton Corporation*

**By the Trademark Trial and Appeal Board:**

On November 19, 2018, in Cancellation No. 92067794 (the “794 Cancellation”), Petitioner filed a motion “for partial summary judgment as to the FOURSQUARE mark only” as to (i) “whether Petitioner has standing to bring this cancellation proceeding; and (ii) whether Reg. No. 2,134,652 for [Respondent’s] FOURSQUARE mark should be cancelled on the ground of abandonment.” 9 TTABVUE 5. On January 7, 2019, Petitioner filed a notice that the parties are involved in a second cancellation proceeding: 92069499 (the “499 Cancellation”).

**Motion for Summary Judgment**

Petitioner’s motion for summary judgment in the ‘794 Cancellation is granted as conceded because Respondent did not oppose it. Trademark Rules 2.127(a), 37 C.F.R. § 2.127(a), and Fed. R. Civ. P. 56. Accordingly, summary judgment is granted to Petitioner in the ‘794 Cancellation as to Reg. No. 2134652. Judgment is entered

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against Respondent with respect to Reg. No. 2134652, the petition to cancel is sustained, and Registration No. 2134652 will be cancelled in due course by the Commissioner for Trademarks.

The '794 Cancellation moves forward only with respect to the FORUM mark subject to Registration No. 2207535.

### **Proof of Service**

Petitioner's January 7, 2018 submission in the '794 Cancellation does not include proof of service on counsel for Respondent as required by Trademark Rule 2.119, 37 C.F.R. § 2.119. To expedite proceedings, a copy of Petitioner's submission may be viewed here:

<http://ttabvue.uspto.gov/ttabvue/v?pno=92067794&pty=CAN&eno=11>

Petitioner is reminded that he must serve copies of all submissions on Respondent and include proof of service in each of his filings. The Board may not consider any future filings that do not include proof of service.

### **Consolidation**

The Board has reviewed the pleadings in the '499 Cancellation and finds that consolidation with the '794 Cancellation is appropriate because the cases concern the same marks and involve common questions of law and fact. *See* Fed. R. Civ. P. 42(a); TBMP § 511 (2018). Accordingly, the Board, on its own initiative, consolidates the proceedings. *Venture Out Props. LLC v. Wynn Resorts Holdings LLC*, 81 USPQ2d 1887, 1889 (TTAB 2007).

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The proceedings may be presented on the same record and briefs. *See Hilson Research Inc. v. Soc’y for Human Res. Mgmt.*, 27 USPQ2d 1423, 1424, n.1 (TTAB 1993); *Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1619, n.1 (TTAB 1989). The record will be maintained in the ‘794 Cancellation as the “parent” case. The parties should file all submissions in the parent case only. Each submission should bear the case caption set forth above and the parent case should be designated as such by following the case number with: “(parent).”

Consolidated cases do not lose their separate identity because of consolidation. Each proceeding retains its separate character and requires entry of a separate judgment. The single 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. *See Dating DNA LLC v. Imagini Holdings Ltd.*, 94 USPQ2d 1889, 1893 (TTAB 2010).

### **Parent Proceeding Resumed**

Proceedings in the ‘794 Cancellation are resumed and dates in the consolidated proceedings are set as follows:

Expert Disclosures Due	4/19/2019
Discovery Closes	5/19/2019
Plaintiff’s Pretrial Disclosures Due	7/3/2019
Plaintiff’s 30-day Trial Period Ends	8/17/2019
Defendant’s Pretrial Disclosures Due	9/1/2019
Defendant’s 30-day Trial Period Ends	10/16/2019
Plaintiff’s Rebuttal Disclosures Due	10/31/2019
Plaintiff’s 15-day Rebuttal Period Ends	11/30/2019
Plaintiff’s Opening Brief Due	1/29/2020
Defendant’s Brief Due	2/28/2020

Plaintiff's Reply Brief Due	3/14/2020
Request for Oral Hearing (optional) Due	3/24/2020

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).