

ESTTA Tracking number: **ESTTA1007562**

Filing date: **10/08/2019**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92070074
Party	Defendant Alfwear Inc.
Correspondence Address	TRENT BAKER BAKER & ASSOCIATES PLLC 358 SOUTH 700 EAST, SUITE B154 SALT LAKE CITY, UT 84102 UNITED STATES bowen@rqn.com, arichards@rqn.com, trent@bakeriplaw.com 801-533-4095
Submission	Motion to Consolidate
Filer's Name	S. Brandon Owen
Filer's email	bowen@rqn.com, arichards@rqn.com, kpickering@rqn.com, docket@rqn.com, trent@bakeriplaw.com, admin@bakeriplaw.com
Signature	/s S. Brandon Owen/
Date	10/08/2019
Attachments	Stipulated Motion to Consolidate - 92070074.pdf(26320 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration No. 4,441,177

Mark: KUHL

Registration Date: November 26, 2013

Cancellation No. 92070074

MAST-JAEGERMEISTER US, INC.,

Petitioner,

v.

ALFWEAR, INC.,

Respondent.

STIPULATED MOTION TO CONSOLIDATE

Under Rule 42 of the Federal Rules of Civil Procedure, Respondent Alfwear, Inc. (“Alfwear” or “Respondent”) and Petitioner Mast-Jaegermeister US, Inc. (“Jägermeister” or “Petitioner”) jointly stipulate and move to consolidate this proceeding with Cancellation Nos. 92071897, 92071907, and 92071953. The parties request that Cancellation Nos. 92071897, 92071907, and 92071953 be consolidated for all purposes. The parties request that this proceeding be suspended (except for the filing of discovery motions) upon the close of discovery and until trial in the consolidated matter.

The present cancellation proceeding (Cancellation No. 92070074) and Cancellation Nos. 92071897, 92071907, and 92071953 should be consolidated because all four proceedings involve the same parties, similar marks, and related or identical issues and consolidation will

help the parties resolve their dispute more efficiently. *See* Fed. R. Civ. P. 42(a); *see also Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 U.S.P.Q.2d 1154 (TTAB 1991). The parties request that Cancellation No. 92070074 be maintained as the “parent” case and that they be permitted to file a single copy of pleadings in the parent case. The parties request that all four cases be presented on the same record and briefs. *DNA v. Holdings*, 94 U.S.P.Q.2d 1889 (TTAB 2010). The parties ask that each proceeding retain its separate character and that the decision on the consolidated cases take into account any differences in the issues raised by the respective pleadings.

Although the parties request that all four proceedings be consolidated, the parties request that Cancellation Nos. 92071897, 92071907, and 92071953 be consolidated for all purposes but that Cancellation No. 92070074 be consolidated for trial only. The present petition (Cancellation No. 92070074) was filed November 25, 2018. Discovery is set to close soon. The other three petitions, in contrast, were not filed until July 2019. And discovery in those proceedings does not close until April 2020. Because discovery in Cancellation No. 92070074 is about to close but only recently opened in Cancellation Nos. 92071897, 92071907, and 92071953, the parties ask that (1) all deadlines in Cancellation Nos. 92071897, 92071907, and 92071953 be consolidated and (2) Cancellation No. 92070074 be suspended upon the close of discovery (except for the filing of discovery motions as explained below) until the parties complete discovery in Cancellation Nos. 92071897, 92071907, and 92071953. The parties ask that following the completion of discovery in Cancellation Nos. 92071897, 92071907, and 92071953, all four cases converge for trial with consolidated trial deadlines. *See DNA v. Holdings*, 94 U.S.P.Q.2d 1889 (TTAB 2010). The parties ask that discovery be limited to the claims, defenses, and marks at

issue in Cancellation Nos. 92071897, 92071907, and 92071953. *See DNA v. Holdings*, 94 U.S.P.Q.2d 1889 (TTAB 2010).

Even though the parties request that Cancellation No. 92070074 be suspended upon the close of discovery in Cancellation No. 92070074, they jointly agree and stipulate that the parties be allowed to file discovery motions (if necessary) related to discovery responses and documents exchanged in Cancellation No. 92070074.

In sum, the parties ask for entry of an order:

- (1) Consolidating Cancellation Nos. 92070074, 92071897, 92071907, and 92071953;
- (2) Appointing Cancellation No. 92070074 as the parent case;
- (3) Consolidating all deadlines in Cancellation Nos. 92071897, 92071907, and 92071953;
- (4) Consolidating the trial deadlines in Cancellation No. 92070074 with the trial deadlines in Cancellation Nos. 92071897, 92071907, and 92071953;
- (5) Closing discovery in Cancellation No. 92070074 at the discovery deadline in Cancellation No. 92070074; and
- (6) Suspending, except for the filing of discovery motions, Cancellation No. 92070074 until trial in the consolidated proceeding.

DATED this 8th day of October, 2019.

RAY QUINNEY & NEBEKER P.C.

/s S. Brandon Owen /

S. Brandon Owen
Adam K. Richards
36 South State Street, Suite 1400
Post Office Box 45385
Salt Lake City, Utah 84145
Telephone: (801) 532-1500
Facsimile: (801) 532-7543
bowen@rqn.com
arichards@rqn.com

/s Trent Baker/

Trent Baker
BAKER & ASSOCIATES PLLC
358 South 700 East, Suite B154
Salt Lake City, Utah 84102
trent@bakeriplaw.com

Attorneys for Respondent Alfwear, Inc.

Consented to by:

/s Katrin Lewertoff /*

Katrin Lewertoff
FERDINAND IP, LLC
1221 Post Road East, Suite 302
Westport, CT 06880
klewertoff@ferdinandip.com

Attorneys for Petitioner Mast-Jägermeister US, Inc.

(*Electronic signature used with permission)

1503274

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 2019, I served a true and correct copy of the foregoing **STIPULATED MOTION TO CONSOLIDATE** via email on the following:

Katrin Lewertoff
FERDINAND IP, LLC
1221 Post Road East, Suite 302
Westport, CT 06880
klewertoff@ferdinandip.com
jferdinand@24iplg.com
amalbin@24iplg.com
lauras@24iplg.com

- via ECF System
- via E-Mail
- via U.S. Mail, Postage Prepaid

Attorneys for Petitioner Mast-Jägermeister US, Inc.

/s Kelly D. Pickering / _____