

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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LTS/RA

December 4, 2019

Cancellation No. 92070074  
(parent case)

Cancellation No. 92071897  
Cancellation No. 92071907  
Cancellation No. 92071953

*Mast-Jaegermeister US, Inc.*

*v.*

*Alfwear Inc.*

**Lawrence T. Stanley, Jr., Interlocutory Attorney:**

On October 8, 2019, Respondent filed a stipulated motion to consolidate the above listed proceedings. The Board notes initially that Respondent has filed its answers in each proceedings for which consolidation is sought.

When cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases. *See* Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense which may be gained from consolidation, against any prejudice or inconvenience which may be caused thereby.

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, e.g., Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993).

The parties to these proceedings are identical, and the issues are similar or related. Accordingly, the motion to consolidate is granted. Cancellation Nos. 92070074, 92071897, 92071907 and 92071953 are hereby consolidated and may be presented on the same record and briefs. *See Hilson Research Inc. v. Society for Human Resource Management, supra*; and *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

The Board file will be maintained in Cancellation No. 92070074 as the "parent case." From this point on, only a single copy of all motions and submissions should be filed, and each submission should be filed in the parent case only, but caption all consolidated proceeding numbers, listing and identifying the "parent case" first.<sup>1</sup>

Despite being consolidated, each proceeding retains its separate character and requires entry of a separate judgment. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings; a copy of the decision shall be placed in each proceeding file.

Upon consolidation, the Board will reset dates for the consolidated proceeding, usually by adopting the dates as set in the most recently instituted of the cases being

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<sup>1</sup> The parties should promptly inform the Board of any other Board proceedings or related cases within the meaning of Fed. R. Civ. P. 42, so that the Board can consider whether further consolidation is appropriate.

Cancellation Nos. 92070074 (Parent), 92071897, 92071907 and 92071953

consolidated. In the stipulated motion to consolidate, the parties request that “Cancellation Nos. 92071897, 92071907, and 92071953 be consolidated for all purposes” and that Cancellation No. 92070074 “be suspended (except for the filing of discovery motions) upon the close of discovery and until trial in the consolidated matter.” 15 TTABVUE 3. Discovery closed in Cancellation No. 92070074 on October 19, 2019. Pursuant to the parties’ stipulated motion, discovery remains closed in Cancellation No. 92070074 and is suspended, except for filing of discovery motions, until trial in the consolidated matter. The expert disclosure and discovery close dates in the schedule below apply to Cancellation Nos. 92071897, 92071907, and 92071953. All remaining dates apply to the consolidated proceedings together.

Trial dates are reset as set forth below.

Expert Disclosures Due in Cancellation Nos. 92071897, 92071907, and 92071953	3/15/2020
Discovery Closes in Cancellation Nos. 92071897, 92071907, and 92071953	4/14/2020
Plaintiff’s Pretrial Disclosures Due	5/29/2020
Plaintiff’s 30-day Trial Period Ends	7/13/2020
Defendant’s Pretrial Disclosures Due	7/28/2020
Defendant’s 30-day Trial Period Ends	9/11/2020
Plaintiff’s Rebuttal Disclosures Due	9/26/2020
Plaintiff’s 15-day Rebuttal Period Ends	10/26/2020
Plaintiff’s Opening Brief Due	12/25/2020
Defendant’s Brief Due	1/24/2021
Plaintiff’s Reply Brief Due	2/8/2021
Request for Oral Hearing (optional) Due	2/18/2021

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, matters in evidence, the manner and timing of taking testimony, 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).