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

Proceeding	92073230
Party	Defendant Platform Beers, LLC
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Submission	Motion to Consolidate
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Signature	/Steven E Lauridsen/
Date	07/17/2020
Attachments	PLATFORM BEER- Motion to Consolidate.pdf(387794 bytes) Exhibit 1 - Email Consenting to Consolidation.pdf(254701 bytes)

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

Bottle Logic Brewing LLC,

Opposer/Petitioner,

v.

Platform Beers LLC,

Applicant/Respondent.

Opposition No. 91235429

Cancellation No. 92073230

PLATFORM BEERS LLC'S UNOPPOSED MOTION TO CONSOLIDATE

Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, Applicant and Respondent Platform Beers LLC ("Platform") moves to consolidate Opposition No. 91235429 and Cancellation No. 92073230. Opposer and Petitioner Bottle Logic Brewing LLC ("Bottle Logic") has consented to consolidation and therefore does not oppose this motion. *See* Exhibit 1.

I. INTRODUCTION

Platform and Bottle Logic and engaged in two intertwined and related proceedings wherein Bottle Logic has asserted U.S. Registration Nos. 4,653,890 and 5,001,783 against two of Platform's trademark applications and eight of Platform's trademark registrations. The substantive issues in the proceedings are nearly identical, and the parties are in fact identical. The Board should therefore consolidate these proceedings to ensure judicial efficiency by having only one trial take place on the common issues presented in these cases.

II. PROCEDURAL POSTURE AND STATEMENT OF FACTS

The parties are entwined in two related proceedings. Bottle Logic has opposed two of Platform's applications on the basis of priority and likelihood of confusion under Section 2(d). In support of its claims, Bottle Logic has asserted U.S. Registration Nos. 4,653,890 and 5,001,783 (collectively, the "Bottle Logic Asserted Marks"). Platform has also asserted a counterclaim to cancel U.S. Registration No. 5,001,783 on the basis that Platform has priority of use over the mark depicted in that registration.

In the second proceeding, Bottle Logic has petitioned to cancel eight of Platform's trademark registrations on the basis of priority and likelihood of confusion under Section 2(d) and dilution pursuant to 15 U.S.C. § 1125(c). Importantly, Bottle Logic bases its petition to cancel on the same Bottle Logic Asserted Marks as in the opposition proceeding.

The schedules in these two proceedings are almost aligned with the discovery cutoff in the opposition proceeding being August 18, 2020 and discovery in the cancellation proceeding closing on September 23, 2020. Because these proceedings involve common issues of law and fact, as well as

identical parties, and because the schedules in the proceedings are nearly aligned, consolidation is appropriate.

III. CONSOLIDATION IS WARRANTED

“When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases.” TBMP § 511; *see also* Fed. R. Civ. P. 42(a); *Wise F&I, LLC v. Allstate Ins. Co.*, 120 USPQ2d 1103, 1105 (TTAB 2016). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense that may be gained from the consolidation against any prejudice or inconvenience that may be caused. *See, e.g., Dating DNA LLC v. Imagini Holdings Ltd.*, 94 USPQ2d 1889, 1893 (TTAB 2010) (motion to consolidate granted); *World Hockey Assoc. v. Tudor Metal Prods. Corp.*, 185 USPQ 246, 248 (TTAB 1975) (consolidation ordered where issues were substantially the same and consolidation would be advantageous to both parties).

Here, there is almost complete commonality between the proceedings at issue with no risk of prejudice or inconvenience. Consolidation is therefore warranted.

A. There exists almost complete commonality between the proceedings.

Almost every aspect of these two proceedings overlap. First, the parties in both proceedings are identical, a fact which favors consolidation. *See Societe Des Produits Marnier Lapostolle v. Distillerie Moccia S.R.L.*, 10 USPQ2d 1241, 1242 (TTAB 1989) (consolidation ordered in view of identity of parties and similarity of issues). Second, the Bottle Logic Asserted Marks at issue are the same, with Bottle Logic having asserted the same marks and the same registrations for those marks in both proceedings, a fact which again favors consolidation. *See M.C.I. Foods Inc. v. Bunte*, 86 USPQ2d 1044, 1046 (TTAB 2008) (proceeding involved identical parties, identical registrations, and related issues); *cf. Ritchie v. Simpson*,

41 USPQ2d 1859, 1860 (TTAB 1996) (cases consolidated despite variations in marks and goods), *rev'd on other grounds*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999). This makes sense given that plaintiffs in Board proceedings commonly file against more than one application or registration, often with differing goods or services. *See generally* TBMP § 305.01; *see also id.* at § 305.02 (explaining inability to file consolidated cancellation and opposition proceedings based on technological limitations of ESTTA filing system and stating remedy is to file separate proceedings and seek consolidation). Next, although one proceeding is an opposition and one is a cancellation, consolidation remains appropriate, especially where, as here, most of the underlying issues—likelihood of confusion—remain the same. *See Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154, 1156 (TTAB 1991) (opposition and cancellation consolidated); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382, 1384 n.3 (TTAB 1991) (opposition and cancellation consolidated).

The primary area where these two proceedings diverge consists of the additional dilution-based claim in the cancellation proceeding. However, such additional claims do not preclude consolidation. *See, e.g., M.C.I. Foods*, 86 USPQ2d at 1046. Simply put, the parties and pleaded registrations are all identical, and the legal issues presented in both proceedings are related and, for the majority of the claims, identical. It therefore best serves both the parties' and the Board's respective resources to have these cases tried together in a single proceeding. Consolidation is thus warranted.

B. There is no risk of prejudice or inconvenience.

The Board may find inconvenience or prejudice where the cases proposed to be combined are in wildly differing stages of litigation. *See, e.g., Lever Brothers Co. v. Shaklee Corp.*, 214 USPQ 654, 655 (TTAB 1982) (consolidation denied where one case was just in pleading stage, and testimony periods had

expired in other). Such is not the case here. Discovery remains open in both proceedings. While discovery has been open longer in the opposition proceeding, the schedules are nearly aligned already. Discovery in both proceedings will involve mostly the same issues, the same witnesses, and the same documents. Moreover, the parties agree consolidation is warranted, thus further indicating that prejudice and inconvenience would not be an issue. *See* Exhibit 1.

IV. CONCLUSION

The facts and issues in these two proceedings are so intertwined that consolidation is appropriate. Platform therefore respectfully requests that its unopposed motion be granted.

Respectfully submitted,

TUCKER ELLIS, LLP

Date: July 17, 2020

By: /s/Steven E. Lauridsen
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Attorney for Applicant and Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **PLATFORM BEERS LLC'S UNOPPOSED MOTION TO CONSOLIDATE** was served on counsel for Defendant's attorney at the following e-mail address(es), this 17th day of July, 2020:

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By: /s/Steven E. Lauridsen
Steven E. Lauridsen

Exhibit 1

Lauridsen, Steven E.

From: Daniel Christopherson <dan@brew.law>
Sent: Thursday, July 16, 2020 4:11 PM
To: Lauridsen, Steven E.; Dan Christopherson
Cc: Garritano, Carlos P.; Brookey, Brian K.
Subject: RE: Bottle Logic v. Platform - Consolidation

<<< EXTERNAL EMAIL >>>

We agree that consolidation makes sense. I consent to your attempt to consolidate, if you see fit.

Regards,

Dan Christopherson,
Attorney at Law
Christopherson Brew Law
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[Christopherson Law Firm PLLC, 11757 W Ken Caryl Ave, Ste F-505, Littleton, CO 80127. This confidential message is intended for the person named above. If you have received this message in error or if you would prefer that I use another means of communication, please let me know. Unauthorized interception of this email is illegal.]



From: Lauridsen, Steven E. <Steven.Lauridsen@tuckerellis.com>
Sent: Thursday, July 16, 2020 4:48 PM
To: Daniel Christopherson <dan@brew.law>; Dan Christopherson <dan.christopherson@bevlaw.com>
Cc: Garritano, Carlos P. <Carlos.Garritano@tuckerellis.com>; Brookey, Brian K. <Brian.Brookey@tuckerellis.com>
Subject: Bottle Logic v. Platform - Consolidation

Hi Dan,

We've traded several emails regarding consolidation but never came to a decision. Is Bottle Logic interested in consolidating the opposition and cancellation proceedings? I wanted to close the loop on this as we don't currently know Bottle Logic's position and thus cannot properly advise our client on the issue.

Best,
Steven

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