

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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adh/mw/vw

May 6, 2021

Cancellation No. 92076463 (Parent Case)
Cancellation No. 92076469
Cancellation No. 92076471
Cancellation No. 92076483
Cancellation No. 92076499
Cancellation No. 92076516
Cancellation No. 92076554

Peloton Interactive, Inc.

v.

Mad Dogg Athletics, Inc.

Ashley D. Hayes, Interlocutory Attorney:

I. Suspension Pending Dispositive Motion

The Board notes Respondent's motion (filed April 27, 2021) to dismiss the petition to cancel or, in the alternative, motion for a more definite statement and to strike certain allegations from the petition. 6 TTABVUE.

When a party timely files a potentially dispositive motion, the proceeding is suspended with respect to all matters not germane to the motion, and no party should file any paper which is not germane to the motion except as otherwise may be specified in a Board order. *See* Trademark Rule 2.127(d). Accordingly, as of the filing date of the motion to dismiss, proceedings are **SUSPENDED** pending disposition of

Respondent's motion to dismiss and/or strike. Any paper filed during the pendency of these motions which is not germane thereto will be given no consideration. *See* Trademark Rule 2.127(d).

The parties should note that the schedule for the discovery conference, initial disclosures and discovery is also suspended by this order and will be reset in the event that the Board resumes proceedings. *See* TBMP § 401.01.

The motion will be decided in due course.

II. Consolidation of Related Proceedings

It has come to the Board's attention that the parties involved in Cancellation Nos. 92076463, 9207669, 92076471, 92076483, 9206499, 92076516 and 92076554 are the same and that the proceedings involve similar marks and the same claim. Respondent, Mad Dog Athletics, Inc., has filed a motion for a more definite statement and to strike in Cancellation No. 92076483, and motions to dismiss, or in the alternative, motions for a more definite statement and to strike in each of the other foregoing proceedings.

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 Rsch. Inc. v. Soc'y for Human Res. Mgmt.*, 27 USPQ2d 1423 (TTAB 1993).

In this case, because the parties to the proceedings are identical and the issues are highly similar, the Board finds it appropriate to consolidate these proceedings in order to consider the claims concurrently once all matters are briefed. Accordingly, Cancellation Nos. 92076463, 9207669, 92076471, 92076483, 9206499, 92076516 and 92076554 are hereby consolidated and may be presented on the same record and briefs. *See id.; Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

The Board file will be maintained in Cancellation No. 92076463 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. However, inasmuch as these proceedings are being consolidated prior to joinder of the issues in each proceeding, an answer and any amended pleadings should be separately filed in each cancellation proceeding.¹ Each answer must be filed through ESTTA, the Board’s Electronic System for Trademark Trials and Appeals. *See* Trademark Rules 2.106(b)(1) and 2.114(b)(1).

¹ 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.

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 typically reset dates for the consolidated proceeding, usually by adopting the dates as set in the most recently instituted of the cases being consolidated. In this case, however, the consolidated proceedings are **suspended** as discussed above.

III. Schedule for Briefing Related Motions

In view of the consolidation of the proceedings and because Respondent has filed highly similar motions to dismiss or for a more definite statement and to strike in each of the consolidated proceedings, Petitioner is allowed **TWENTY (20) DAYS from the date of this order** to file a single combined brief in response to Respondent's motions in the consolidated proceedings. *See* Trademark Rule 2.127(a). The response brief should be filed in the parent case only.

In accordance with Trademark Rule 2.127(a), 37 C.F.R. § 2.127(a), Respondent's combined reply in support of its motions, if necessary, shall be filed in the parent case within **TWENTY (20) DAYS from the date of service of the brief in response to the motions**.