

UNITED STATES PATENT AND TRADEMARK OFFICE  
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Baxley

March 22, 2022

Opposition No. 91254642  
Cancellation No. 92073705  
Cancellation No. 92078906

*My Own Meals, Inc.*

*v.*

*Purfoods, LLC*

*(as consolidated)*

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

On March 17, 2022, Plaintiff filed a motion for partial summary judgment on the issue of priority in Opposition No. 91254642, 36 TTABVUE. In the interest of moving this case along without undue delay, the Board elects to decide that motion now. *See* Trademark Rules 2.127(a) and 2.127(e)(1); TBMP § 510.01 (2021).

To prevail on a claim under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), Plaintiff must establish (1) entitlement to a statutory cause of action (formerly “standing”); (2) prior use of, or ownership of a registration for, its pleaded marks; and (3) likelihood of confusion, mistake or deception of consumers resulting from contemporaneous use of the parties’ respective marks on their respective goods and services. *See Fram Trak Indus., Inc. v. WireTracks LLC*, 77 USPQ2d 2000, 2004 (TTAB 2006). The purpose of a motion for summary judgment is judicial economy,

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that is, to avoid an unnecessary trial. *See* TBMP § 528.01. Judicial economy is not served by piecemeal entry of partial summary judgment for plaintiffs on individual likelihood of confusion issues, leaving disputes concerning remaining issues to be resolved at trial. Accordingly, it is not the Board's practice to grant partial summary judgment for plaintiffs on individual issues in Section 2(d) claims.<sup>1</sup> In view of the foregoing, Plaintiff's motion for partial summary judgment is denied.

Applicant's motion (filed February 3, 2022 in the Board file for Cancellation No. 92078906) to consolidate Cancellation No. 92078906 with previously consolidated Opposition No. 91254642 and Cancellation No. 92073705 is granted as conceded and as well-taken. *See* Trademark Rule 2.127(a); Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991); TBMP § 511 (2017). The consolidated cases may be presented on the same record and briefs. *See Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989); *Hilson Res. Inc. v. Soc. for Human Resource Mgmt.*, 26 USPQ2d 1423 (TTAB 1993).

The Board file will be maintained in Opposition No. 91254642 as the "parent" case. As a general rule, the parties should file only a single copy of any submission in these consolidated proceedings in the Board file for the parent case. That copy, however, should include all of the consolidated proceeding numbers in the caption thereof.

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<sup>1</sup> In an August 4, 2022 order, 24 TTABVUE 7-8, the Board denied Defendant's motion for partial summary judgment on the issue of priority with regard to Plaintiff's pleaded common law marks.

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

Proceedings in consolidated Opposition No. 91254642 and Cancellation No. 92073705 were suspended by operation of Trademark Rule 2.127(d) as of the filing of Plaintiff's motion for partial summary judgment and remain suspended through April 5, 2022 until the opening of discovery in Cancellation No. 92078906. The parties are allowed until May 6, 2022 to respond to any outstanding written discovery requests in Opposition No. 91254642 and Cancellation No. 92073705. In keeping with Board practice, the Board otherwise will adopt the schedule for Cancellation No. 92078906, the most recently instituted of the consolidated proceedings. *See* TBMP § 511. That schedule is as follows.

Deadline for Discovery Conference in Cancellation No. 92078906	4/6/2022
Discovery Opens in Cancellation No. 92078906, otherwise reopens	4/6/2022
Initial Disclosures Due in Cancellation No. 92078906	5/6/2022
Expert Disclosures Due	9/3/2022
Discovery Closes	10/3/2022
Plaintiff's Pretrial Disclosures Due	11/17/2022
Plaintiff's 30-day Trial Period Ends	1/1/2023
Defendant's Pretrial Disclosures Due	1/16/2023
Defendant's 30-day Trial Period Ends	3/2/2023
Plaintiff's Rebuttal Disclosures Due	3/17/2023
Plaintiff's 15-day Rebuttal Period Ends	4/16/2023
Plaintiff's Opening Brief Due	6/15/2023
Defendant's Brief Due	7/15/2023
Plaintiff's Reply Brief Due	7/30/2023
Request for Oral Hearing (optional) Due	8/9/2023

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is

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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).

#### **TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS**

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing.

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**Note:** Parties are strongly encouraged to check the entire document before filing.<sup>2</sup> The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the ESTTA help webpage.

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<sup>2</sup> To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.