

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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KGC

October 5, 2023

Cancellation No. 92082419 (parent)

Cancellation No. 92082420

Sycomp A Technology Company, Inc.

v.

*Groupware Technology, Inc. and TRACE3
LLC (joined after assignment)¹*

Kevin G. Crennan, Interlocutory Attorney:

Preliminary Matter

Respondent filed its answers to the petitions for cancellation as well as its counsel's notices of appearance, but these submissions are not compliant with Trademark Rule 2.119. In particular, the certificates of service accompanying the answers indicate that the answers were "mail[ed] ... via First Class Mail" (4 TTABVUE 7), and the certificates of service accompanying the notices of appearance

¹ An assignment of the subject registrations from Groupware Technology, Inc. to TRACE3 LLC was recorded with the USPTO's Assignments Recordation Branch on June 23, 2023 at Reel/Frame 8108/0196. In view thereof, TRACE3 LLC is hereby **joined** as a party-defendant in this consolidated proceeding, and the caption has been updated accordingly. See TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 512.01 (2023).

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indicate that they were served at a street address (5 TTABVUE 4). Service, however, “must be made by email, unless otherwise stipulated.”² Trademark Rule 2.119(b).

Notwithstanding, to expedite this matter, and inasmuch as the interests of the parties would be served thereby, the Board, in its discretion, will accept these submissions, which are of record. *See* TBMP § 113.02. Petitioner may view these submissions using TTABVUE at <https://ttabvue.uspto.gov/ttabvue/>. The parties, however, are reminded that the Board may decline to consider any future submission that does not comply with the service requirements of Trademark Rule 2.119.

Consolidation

When proceedings involving common questions of law or fact are pending before the Board, consolidation may be ordered upon the Board’s own initiative. *See* Fed. R. Civ. P. 42(a); TBMP § 511. Consolidation is discretionary with the Board. *See, e.g., Wis. Cheese Grp., LLC v. Comercializadora de Lácteos y Derivados, S.A. de C.V.*, 118 USPQ2d 1262, 1264 (TTAB 2016). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense that may be gained from consolidation against any prejudice or inconvenience that may be caused thereby. *See id.*; *World Hockey Ass’n v. Tudor Metal Prods. Corp.*, 185 USPQ 246, 248 (TTAB 1975); *see also* TBMP § 511.

A review of Cancellation Nos. 92082419 and 92082420 reveals that consolidation is appropriate. Specifically, the parties and purported affirmative defenses are identical, the proceedings are in the same procedural posture, and one ground for

² There is no indication that the parties stipulated to a manner of service other than by email.

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cancellation overlaps, namely, a claim of mere descriptiveness. In addition, the subject marks share the same wording “RACK AND ROLL,” and the services identified in the subject registrations appear to be identical.

In view thereof, and in the Board’s discretion, Cancellation Nos. 92082419 and 92082420 are hereby **consolidated** and may be presented on the same record and briefs. *See, e.g., Wis. Cheese Grp.*, 118 USPQ2d at 1264 (citing *Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1619 n.1 (TTAB 1989)).

The Board file will be maintained in Cancellation No. 92082419 designated as the “parent.” From this point on, the parties are directed to file a copy of all motions and submissions in the parent case only, and caption all consolidated proceeding numbers, listing and identifying the “parent” first (as in the caption of this order).

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.

Suspension

Proceedings are **suspended** pending disposition of the motions, filed October 3, 2023, to compel initial disclosures and discovery, except as discussed below. The parties should not file any submission that is not germane to the motions to compel. *See* Trademark Rule 2.120(f)(2).

The parties may not serve any additional discovery until the period of suspension is lifted or expires by or under order of the Board. The filing of the motions to compel

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shall not toll the time for a party to comply with any initial disclosure requirement, or to respond to any outstanding discovery requests or to appear for any noticed discovery deposition. The parties need not make pretrial disclosures until directed to do so by the Board. *See id.*; TBMP § 523.01.

The motions to compel will be decided in due course.