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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Baxley

Mailed: March 8, 2005

Opposition No. **91159413**
Opposition No. **91161263**

Cheeseburger In Paradise, Inc.

v.

Jimmy Buffett

Before Hohein, Hairston, and Chapman,
Administrative Trademark Judges

By the Board:

Jimmy Buffett ("applicant") seeks to register the mark CHEESEBURGER IN PARADISE and design in the following form:

for "jewelry, lapel pins and watches" in International Class 14;[1] "beverage glassware, shot glasses and foam drink holders" in International Class 21;[2] "clothing, namely

[1] Application Serial No. 78211424, filed on February 5, 2003 and based on an assertion of a bona fide intent to use in commerce under Trademark Act Section 1(b), 15 U.S.C. Section 1051(b).

[2] Application Serial No. 78211429, filed on February 5, 2003 under Trademark Act Section 1(a), 15 U.S.C. Section 1051(a), and

shirts, T-shirts, sweatshirts and baseball caps" in International Class 25;[3] and "nightclub services and providing information in the field of nightclub services, namely live entertainment event calenders, location information and driving directions via the Internet" in International Class 41 and "restaurant and bar services, and providing information in the field of restaurant and bar services, namely food and drink menus, location information and driving directions via the Internet" in International Class 45.[4] Applicant also seeks to register CHEESEBURGER IN PARADISE and design in the following form:

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alleging June 1, 2002 as the date of first use and date of first use in commerce.

[3] Application Serial No. 78211430, filed on February 5, 2003 under Trademark Act Section 1(a), 15 U.S.C. Section 1051(a), and alleging June 1, 2002 as the date of first use and date of first use in commerce.

[4] Application Serial No. 78211448, filed on February 5, 2003 under Trademark Act Section 1(a), 15 U.S.C. Section 1051(a), and alleging June 1, 2002 as the date of first use and date of first use in commerce. The application includes the following concurrent use statement:

> Registration limited to the area comprising the entire United States except for the state of Hawaii pursuant to the decree of the United States District Court for the central District of California Western division, CV98-1730 CM (AIJx), dated June 8, 1999. Concurrent registration with Jimmy Buffett, 424-A Fleming Street, Key West, Florida 33040 and Cheeseburger in Paradise, Inc., P.O. Box 10875, Lahaina, Hawaii.

for "jewelry, lapel pins and watches" in International Class 14;[5] "beverage glassware, shot glasses and foam drink holders" in International Class 21;[6] and "clothing, namely shirts, T-shirts, sweatshirts and baseball caps" in International Class 25.[7]

Registration of the marks in the above-identified applications in all classes has been opposed by Cheeseburger in Paradise, Inc. ("opposer") on the ground of a likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), with its family of marks which are composed of the following: (1) opposer's previously used and registered marks CHEESE BURGER IN PARADISE and design in the following form:

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[5] Application Serial No. 78211425, filed on February 5, 2003 and based on an assertion of a bona fide intent to use in commerce under Trademark Act Section 1(b), 15 U.S.C. Section 1051(b).

[6] Application Serial No. 78211432, filed on February 5, 2003 under Trademark Act Section 1(a), 15 U.S.C. Section 1051(a), and alleging June 1, 2002 as the date of first use and date of first use in commerce.

[7] Application Serial No. 78211449, filed on February 5, 2003 under Trademark Act Section 1(a), 15 U.S.C. Section 1051(a), and alleging June 1, 2002 as the date of first use and date of first use in commerce.

CHEESE BURGER
•I•N•P•A•R•A•D•I•S•E•

as used in connection with "restaurant and bar services" in International Class 42,[8] and CHEESE BURGER and design in the following form:

CHEESE BURGER

(hereinafter "Cheese Burger mark") as used on "household utensils, namely, pots, frying pans, spatulas, serving spoons, and mixing spoons; containers for household or kitchen use; trivets; coasters not of paper or table linen; dishes; beverage glassware; water bottles sold empty; and mugs" in International Class 21 and "promotional merchandise, namely, ornamental novelty pins, ornamental novelty buttons" in International Class 26;[9] (2) opposer's

[8] Registration No. 1765057, issued on April 13, 1993 and reciting October 25, 1989 as the date of first use and date of first use in commerce. The registration is limited to the area comprising Hawaii pursuant to the decree of the United States District Court for the Central District of California, Western Division, in Civil Action No. CV 98-1730 CM (AIJx) and identifies applicant as an excepted cconcurrent user. Applicant's petition to cancel this registration was instituted as Cancellation No. 92025148 and remains pending before the Board.

[9] Registration No. 2795196, issued December 16, 2003 and reciting February 1, 1990 as the date of first use and date of first use in commerce.

previously used "Cheese Burger mark" in connection with "restaurant and bar services" in International Class 42;[10] and (3) opposer's constructively used "Cheese Burger mark" for "headwear; footwear; and clothing, namely, caps, shirts, t-shirts, tanktops, blouses, jackets, coats, sweaters, sweatshirts, shorts, pants, beachwear, swimwear, swimsuits, pareos, caps, visors, and hats" in International Class 25.[11]

This case now comes up for consideration of the following motions: (1) applicant's motion (filed April 29, 2004) for leave to amend his answer in Opposition No. 91159413 to assert a compulsory counterclaim; (2) applicant's motion (filed April 29, 2004) for summary judgment in Opposition No. 91159413; (3) applicant's motion (filed October 7, 2004) for summary judgment in Opposition

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[10] Opposer's mark as used in connection with these services is the subject of application Serial No. 75838294, filed November 2, 1999 and reciting February 1, 1990 as the date of first use and first use in commerce. Subsequent to the filing of opposer's notice of opposition that commenced Opposition No. 91159413, this application matured on February 3, 2004 into Registration No. 2810903. The registration includes a disclaimer of any right to use CHEESEBURGER apart from the mark as shown.

[11] Opposer's pleaded "Cheese Burger mark" for "headwear; footwear; and clothing, namely, caps, shirts, t-shirts, tanktops, blouses, jackets, coats, sweaters, sweatshirts, shorts, pants, beachwear, swimwear, swimsuits, pareos, caps, visors, and hats" in International Class 25 is the subject of application Serial No. 75981924, filed November 2, 1999 and based on an assertion of a bona fide intent to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. Section 1051(b). Following the filing of opposer's statement of use in this application, a final refusal of registration based on likelihood of confusion under Section 2(d) with applicant's Registration No. 1935684 for the mark CHEESEBURGER IN PARADISE in typed form for "T-shirts and sweatshirts" in International Class 25 was issued on October 25, 2004.

No. 91161263; and (4) opposer's motion (filed October 27, 2004) to consolidate the above-referenced proceedings. The motions have been fully briefed.

Turning first to opposer's motion to consolidate, the Board notes that such motion was filed after the Board's issuance of orders (on May 20, 2004 in Opposition No. 91159413 and on October 17, 2004 in Opposition No. 91161263) suspending the above-captioned proceedings pending disposition of applicant's motions for summary judgment and advising the parties that any papers which were not germane to the motions for summary judgment would receive no consideration. Although the motion to consolidate is not germane to applicant's motions for summary judgment, the Board notes that the parties were told in the notices instituting each of the above-captioned proceedings that, if they are parties to other Board proceedings involving related marks, or if during the pendency of those proceedings they become parties to such proceedings, they should notify the Board immediately so that the Board can consider whether consolidation is appropriate. Accordingly, the Board will consider opposer's motion to consolidate.

The Board notes initially that applicant has filed his answer in both of the proceedings for which consolidation is sought. See TBMP Section 511 (2d ed. rev. 2004). The Board may consolidate pending cases that involve common questions

of law or fact. *See* Fed. R. Civ. P. 42(a); *see also, Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991) and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). Inasmuch as the parties to the respective proceedings are the same and the proceedings involve common questions of law or fact, the Board finds that consolidation of the above-referenced proceedings is appropriate.

In view thereof, opposer's motion to consolidate is hereby granted. Opposition Nos. 91159413 and 91161263 are hereby consolidated and may be presented on the same record and briefs.

We turn next to applicant's motions for summary judgment.[12] In support thereof, applicant contends that, in view of a settlement agreement in a civil action between the parties, opposer is precluded from opposing registration of applicant's involved marks.[13] In particular, applicant contends that the district court found in a September 16,

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[12] Inasmuch as applicant's reply briefs in connection with his motions for summary judgment rebut arguments raised by opposer in its briefs in response to the motions for summary judgment and clarify issues before us, we have considered those reply briefs. See Trademark Rule 2.127(a). However, because Rule 2.127(a) expressly prohibits the filing of any further papers in connection with motions in Board inter partes proceedings, we have not considered either opposer's sur-reply briefs or applicant's replies to opposer's sur-reply briefs in connection with the motions for summary judgment.

[13] The civil action is styled *James W. Buffett v. Cheeseburger in Paradise, Inc.*, Case No. CV 98-1730 CM (AIJx), filed in the United States District Court for the Central District of California.

1998 decision that applicant, having coined the phrase "Cheeseburger in Paradise," used his mark prior to opposer; that the district court, noting that applicant coined the phrase "cheeseburger in paradise" in a 1978 song that applicant wrote, recorded and performed, found that opposer's use of the CHEESE BURGER IN PARADISE mark for restaurant and bar services was confusingly similar to applicant's CHEESEBURGER IN PARADISE mark and therefore ordered the cancellation of opposer's Registration No. 1765057; that the parties subsequently entered into a settlement agreement in June 1999 whereby the parties agreed that the geographic scope of opposer's Registration No. 1765057 would be limited to the state of Hawaii and that opposer would be barred from objecting to the use or registration of applicant's CHEESEBURGER IN PARADISE marks, except in certain limited situations that are not at issue in this proceeding; that applicant has several pending applications and owns two registrations for CHEESEBURGER IN PARADISE marks, one of which is incontestable;[14] and that,

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[14] The registrations of which applicant claims ownership in his motions for summary judgment are as follows:

Registration No. 1935684 for the mark CHEESEBURGER IN PARADISE in typed form for "T-shirts and sweatshirts" in International Class 25, issued November 14, 1995 and alleging 1984 as the date of first use and date of first use in commerce. Section 8 affidavit accepted, Section 15 affidavit acknowledged.

Registration No. 2468644 for the mark CHEESEBURGER IN PARADISE in typed form for "sandwiches" in International Class 30, issued July 17, 2001 and alleging 1987 as the date of first use and date

notwithstanding the foregoing, opposer filed notices of opposition in which it asserted that its rights in its "family" of Cheese Burger marks would be damaged by the registrations sought by applicant, but failed to mention in the notices of opposition that its rights in its pleaded marks are substantially limited by the parties' settlement agreement. Applicant further contends that opposer does not have a real interest in maintaining these proceedings because the district court has already determined that applicant is the prior owner of the CHEESEBURGER IN PARADISE mark; and that opposer cannot prove either prior use of its mark or that it will be damaged by the registrations sought by applicant. Applicant has included as an exhibit in support of each of his motions a copy of the district court's decision in which it entered partial summary judgment against opposer (as defendant in the civil action) and ordered the cancellation of opposer's Registration No. 1765057. Accordingly, applicant asks that the Board enter summary judgment in his favor on opposer's likelihood of confusion claim and dismiss these oppositions.

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of first use in commerce. The registration includes a disclaimer of any exclusive right to use CHEESEBURGER apart from the mark as shown. The registration is limited to the area comprising the entire United States except for the state of Hawaii pursuant to the decree of the United States District Court for the Central District of California, Case No. CV98-1730 CM (AIJx), dated June 8, 1999.

In response, opposer contends that it does not object to applicant's registration of the word mark CHEESEBURGER IN PARADISE, but instead objects only to the registration of the specific design marks at issue; that the district court's finding that applicant was the senior user of the word mark CHEESEBURGER IN PARADISE is irrelevant because opposer is not opposing registration of the word mark; that the parties' settlement agreement preserves opposer's right to oppose registration of applicant's marks which violate opposer's rights; that opposer may rely on its rights in the "Cheese Burger marks" in support of its Section 2(d) claim against applicant's involved marks; and that there are genuine issues of material fact with regard to its Section 2(d) claims. In support of its briefs in response, opposer has included the declaration of its president, Laren Gardner. Accordingly, opposer asks that the Board deny applicant's motions.

In reply, applicant contends that opposer's arguments violate the well-settled rule that marks should be considered in their entireties and not dissected into their component parts; that there is no likelihood of confusion between the marks at issue; and that it is fraudulent for opposer to seek relief via these opposition proceedings.[15]

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[15] To the extent that applicant's reply brief in Opposition No. 91159413 asks that sanctions be entered against opposer, the Board notes that the request is not submitted to the Board as a

Applicant included excerpts from the parties' settlement agreement in the civil action with his reply briefs.[16]

The purpose of summary judgment is to avoid an unnecessary trial where additional evidence would not reasonably be expected to change the outcome. See *Pure Gold, Inc. v. Syntex (U.S.A.) Inc.*, 730 F.2d 624, 222 USPQ 741 (Fed. Cir. 1984). See also TBMP section 528.01 (2d ed. rev. 2004) and cases cited therein. Generally, summary judgment is appropriate in cases where the moving party establishes that there is no genuine issue of material fact which requires resolution at trial and that it is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c). An issue is material when its resolution would affect the outcome of the proceeding under governing law. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505 (1986); and *Octocom Systems Inc. v. Houston Computers Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1786 (Fed. Cir. 1990). A fact is genuinely in dispute if the evidence of record is such that a reasonable fact finder could return

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separate filing and that applicant has not indicated that he has complied with the safe harbor requirements of Fed. R. Civ. P. 11(c)(1). Accordingly, applicant's request for entry of sanctions is not properly before us and will receive no further consideration. In any event, the Board does not award legal fees and/or expenses. See Trademark Rule 2.127(f). See also TBMP Section 502.05 (2d ed. rev. 2004).

[16] Although applicant filed only excerpts from the settlement agreement as exhibits in connection with his motions for summary judgment, applicant filed a complete copy of the settlement

a verdict in favor of the nonmoving party. *Id.* However, a dispute over a fact that would not alter the Board's decision on the legal issue will not prevent entry of summary judgment. See, e.g., *Kellogg Co. v. Pack 'Em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991).

The question of whether applicant is entitled to summary judgment on the basis of the settlement agreement requires construction of the terms of the agreement. We have construed the agreement in accordance with the laws of the State of California pursuant to paragraph 21 of the agreement. Applying the principles of contract construction to this agreement, we have no difficulty concluding that applicant is entitled to judgment dismissing these oppositions as a matter of law. The language of the agreement is clear. The parties' settlement agreement in the civil action includes the following relevant portions.

> As used herein, "the Mark" shall mean (1) [T]he phrase CHEESEBURGER IN PARADISE, or any mark confusingly similar thereto; and/or (2) any mark that includes either the phrase 'Cheeseburger in Paradise' or both of the words 'cheeseburger' and 'paradise.'

Settlement Agreement at paragraph 1(d).

> This Settlement Agreement imposes no restrictions of any nature or kind on [applicant], and [opposer] shall not object to any use of the Mark

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agreement as an exhibit to each of his answers in the above-captioned proceedings.

> anywhere in the world in any capacity by [applicant] except that
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> > (i) …[Applicant] shall not use the Mark (1) on or in connection with the operation or provision of any restaurant, bar, nightclub, casino, lodging or resort services in [the state of Hawaii, or in Mexico and Japan]; or (2) as the name of any restaurant, bar, nightclub, casino, lodging establishment, or resort or separate area therein.
> >
> > (ii) [W]ithin Hawaii, Mexico and Japan only, [applicant] shall not use the Mark to refer to or identify a food item on a menu for an establishment in those geographic areas, … and shall not use "Cheeseburger in Paradise" on a food menu other than in an ornamental manner with at least, and no more prominently than, one other song, book, play title, or other word mark of [applicant], or as a mark for or in connection with merchandise items, provided other merchandise items without that mark also appear or are mentioned in the same section of the menu;
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> > (iii) [W]ithin Hawaii, Mexico and Japan only, [applicant] shall not hand out or distribute menus other than those permissibly used under this Agreement in Hawaii, Mexico or Japan; and
> >
> > (iv) [Applicant] shall not use or display the Mark anywhere in the world in the manner specifically depicted in …Registration No. 1765057.

Settlement Agreement at paragraph 7(a).[17]

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[17] The settlement agreement expressly limits opposer's right to use the CHEESE BURGER IN PARADISE mark in the United States to restaurant and bar services in Hawaii, menu items at those restaurants, and promotion of those restaurants. See Settlement Agreement at paragraphs 4-5. The settlement agreement further limits opposer's right to register the CHEESE BURGER IN PARADISE mark in the United States to restaurant and bar services and menu items in Hawaii. See Settlement Agreement at paragraph 6.

> [Applicant] shall have the right to register or apply to register the Mark anywhere in the world for any goods and services, and [opposer] shall not object to such registration, except that, within Hawaii, Mexico and Japan, [applicant] shall not register or seeks to register the Mark: (i) on or in connection with any restaurant, bar, nightclub, casino, lodging establishment or resort; (ii) as the name of any restaurant, bar, nightclub, casino, lodging establishment or resort; (iii) as the name of any separate area within a restaurant, bar, nightclub, casino, lodging establishment or resort; or (iv) as the name of a food item appearing on a menu.

Settlement Agreement at paragraph 8(a).

> [T]he Parties shall not interfere with or object to, oppose, challenge, or seek to cancel the other Party(ies)' pending or future applications to register or registrations for the Mark for any goods, services, or businesses, so long as such applications and registrations are permitted by, and comply with, this Agreement.

Settlement Agreement at paragraph 9(b).[18]

The wording in each of applicant's involved marks consists entirely of the phrase CHEESEBURGER IN PARADISE. As such, the involved marks are plainly within the purview of the settlement agreement, and that settlement agreement expressly precludes opposer from opposing registration of applicant's involved marks. Although the settlement agreement permits opposer to object to, or take action

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[18] In addition, the parties have reserved each party's right to object to, or take action against, the other for any actions that are prohibited thereby and have stipulated that the parties will litigate any disputes arising from that agreement in the state and federal courts of the State of California and that the parties have consented to the jurisdiction of, and venue in, the

against, any application containing the phrase CHEESEBURGER IN PARADISE that is prohibited thereby, a review of the involved applications indicates that they are in compliance with the settlement agreement.[19]

Accordingly, we find that, under the agreement, opposer is precluded from opposing registration of applicant's involved marks. Based on the foregoing, we find that there is no genuine issue of material fact that opposer lacks standing to oppose registration of applicant's involved marks, and that applicant is entitled to entry of judgment in his favor as a matter of law.

In view thereof, applicant's motions for summary judgment are hereby granted. The oppositions are dismissed with prejudice.

We turn next to applicant's motion for leave to amend his answer in Opposition No. 91159413 to add a

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California courts. See Settlement Agreement at paragraphs 12 and 22.

[19] We note that applicant's involved application Serial No. 78211448 for the mark CHEESEBURGER IN PARADISE and design for "nightclub services and providing information in the field of nightclub services, namely live entertainment event calenders, location information and driving directions via the Internet" in International Class 41 and "restaurant and bar services, and providing information in the field of restaurant and bar services, namely food and drink menus, location information and driving directions via the Internet" in International Class 45 seeks a registration, which is "limited to the area comprising the entire United States except for the state of Hawaii," in accordance with the parties' settlement agreement, while the remaining involved applications are geographically unrestricted, as permitted by such agreement.

counterclaim.[20] By such counterclaim, applicant seeks to restrict the geographic scope of opposer's Registration Nos. 2795196 and 2810903, both of which are for the "Cheese Burger mark," in all classes to the state of Hawaii. In response thereto, opposer argues that, pursuant to Trademark Rule 2.133(a), geographic limitations cannot be determined in an opposition proceeding and instead can only be determined in a concurrent use proceeding.

On June 7, 2004, applicant filed a "reply memorandum" in connection with his motion for leave to amend his pleading. However, he included a second amended answer and counterclaim seeking cancellation of opposer's Registration Nos. 2795196 and 2810903.[21] Opposer, on June 10, 2004, filed a response to the "reply memorandum." Therein, opposer contends that applicant's reply memorandum is in

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[20] Our dismissal of opposer's oppositions *supra* does not by itself preclude applicant from going forward as plaintiff in his counterclaims. See, e.g., *Syntex (U.S.A.) Inc. v. E.R. Squibb & Sons, Inc.*, 14 USPQ2d 1879 (TTAB 1990). In addition, we note that, by his counterclaim, applicant seeks to cancel or restrict registrations for the "Cheese Burger mark" which is not the subject of the parties' settlement agreement.

[21] Both the first and second amended answers and counterclaims, were filed electronically via the Electronic System for Trademark Trials and Appeals (ESSTA) and contained no signature in the signature block thereof. Following the issuance of the Board's August 27, 2004 order in Opposition No. 91159413, in which the Board required applicant to submit signed copies of the first and second amended answers and counterclaims, applicant filed signed copies thereof on September 23, 2004.

Nonetheless, the parties are advised that, under the Board's recent decision in *PPG Industries, Inc. v. Guardian Industries Corp.*, ___ USPQ2d ___ (TTAB, Opposition No. 91162329, February 3,

fact a new motion for leave to amend its pleading and that the new motion for leave to amend is not properly before the Board. In particular, opposer contends that, by captioning his June 7, 2004 filing as a reply memorandum, applicant is improperly seeking to prevent opposer from responding thereto; that the reply memorandum introduces new arguments which are improperly raised in the context of a reply brief; and that, because applicant's reply memorandum is in fact a new motion, its filing is in violation of the Board's May 20, 2004 suspension order, which stated that any papers which are not germane to the motion for summary judgment and motion for leave to amend his pleading that applicant filed on April 29, 2004 will not be considered.

The Board agrees with opposer that applicant, by way of his "reply memorandum," improperly raises new arguments and seeks to introduce a second amended pleading in Opposition No. 91159413. See *Carbino v. West*, 168 F.3d 32 (Fed. Cir. 1999). As such, applicant's "reply memorandum" is actually a new motion for leave to amend applicant's pleading in that proceeding.[22] Because the new motion is apparently intended

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2005), the electronic signature on the ESSTA filing form is considered to pertain to any signature in that filing.

[22] Accordingly, applicant's first motion for leave to amend his pleading and first amended answer and counterclaim are deemed to have been withdrawn by the filing of the second motion and second amended pleading.

In any event, opposer's argument that geographic limitations are properly raised only in the context of concurrent use proceedings is well-taken. See Trademark Rule 2.133(c). As

to correct defects in applicant's first amended answer and counterclaim, the new motion is germane to the first motion for leave to amend his answer and therefore is properly before the Board. However, because the new motion was captioned as a reply memorandum, opposer believed that it was prohibited from filing a brief in opposition thereto.

The Board further notes that the compulsory counterclaim in applicant's second amended pleading in Opposition No. 91159413 seeks cancellation or restriction of the same registrations on the same grounds as he does in the counterclaim that he subsequently included as part of he answer in Opposition No. 91161263.[23] If applicant failed to timely plead his compulsory counterclaims in Opposition Nos. 91159413, he cannot circumvent that failure by asserting the counterclaims in Opposition No. 91161263. See *Consolidated Foods Corporation v. Big Red, Inc.*, 231 USPQ 744 (TTAB 1986); 6 Wright, Miller, and Kane, *Federal Practice and Procedure Civil 2d*, Section 1417 (1990); TBMP Section 313.04 (2d ed. rev. 2004). Accordingly, before these proceedings go forward on the counterclaim, the Board finds it necessary

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such, the counterclaim that applicant sought to add herein by way of the first amended pleading could not be allowed under the Trademark Rules, and applicant's first motion for leave to amend his pleading would have been denied. See *Foman v. Davis*, 331 U.S. 178, 182 (1962); Fed. R. Civ. P. 15(a); TBMP Section 507.02 (2d ed. rev. 2004).

[23] It is unnecessary to file essentially the same counterclaim in each proceeding.

to resolve the question of whether applicant may amend his answer in Opposition No. 91159413 to assert the compulsory counterclaim therein. Therefore, we deem it appropriate to defer consideration of applicant's new motion for leave to file a second amended pleading to allow for full briefing thereof.

Opposer is allowed until **twenty days** from the mailing date of this order to file a brief in opposition to applicant's new motion for leave to file a second amended pleading.[24]

Proceedings herein otherwise remain suspended.

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[24] Any reply brief in connection therewith is due in accordance with Trademark Rule 2.127(a).