

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

Mailed: February 1, 2013

Opposition No. 91205896

Beau L. Tardy

v.

Wild Brain Entertainment, Inc.

Andrew P. Baxley, Interlocutory Attorney:

The first sentence of the second full paragraph of the January 11, 2013 order is modified as follows: delete "Because an answer is of record herein," and substitute therefor "Because opposer's motion was filed more than twenty-one days after the filing of applicant's answer,".

In a January 11, 2013 order, the Board granted opposer's motion for leave to file an amended notice of opposition and noted specific defects in the pleading of that amended notice of opposition.¹ On January 31, 2013, opposer filed a second amended notice of opposition without either applicant's written consent to the filing thereof or a motion for leave to file a second amended notice of opposition. Contrary to opposer's assertion, the Board did

¹ The first sentence of the second full paragraph of the January 11, 2013 order is modified as follows: delete "Because an answer is of record herein," and substitute therefor "Because opposer's motion was filed more than twenty-one days after applicant's answer,".

not give leave to amend paragraph 4 of the amended notice of opposition. Rather, the Board stated that "opposer must seek leave of the Board to file a second amended notice of opposition" which corrects the noted defects in paragraph 4. January 11, 2013 order at 5.

Under the circumstances herein, opposer could file a second amended notice of opposition either with applicant's written consent or with leave of the Board. See Fed. R. Civ. P. 15(a); TBMP Section 507.02 (3d ed. rev. 2012). Accordingly, the second amended notice of opposition is not properly before the Board.

Opposer is allowed until twenty days from the mailing date set forth in this order to file applicant's written consent to the second amended notice of opposition or a motion for leave to file the second amended notice of opposition, failing which the second amended notice of opposition will receive no consideration.

Proceedings herein are otherwise suspended.