

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

Mailed: January 30, 2014

Opposition No. 91212383

Monster Energy Company

v.

Monsters and Machines, LLC

**Veronica P. White, Paralegal Specialist:**

On November 4, 2013, in view of applicant's failure to file a timely answer or request an extension of time to file an answer, the Board issued a notice of default. On December 9, 2013, applicant, acting pro se, filed a response to the show cause order, which fails to indicate proof of service on opposer, which the Board is construing as a motion to set aside applicant's default. See Fed. R. Civ. P. 55. In order to expedite this matter, a copy of applicant's filing can be viewed at:

<http://ttabvue.uspto.gov/ttabvue/v?pno=91212383&pty=OPP&eno=5>.

Applicant is reminded of its obligation to send a service copy of any paper filed herein to the opposer, and to include proof of service when the paper is filed with

the Board. Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding must show proof of service. This written statement should take the form of a "certificate of service" and should read as follows:

The undersigned certifies that a copy of the attached <describe filing> was served, by first class mail, upon opposer at the following address: [insert name and address].

The certificate of service must be signed and dated.

**OPPOSER MAY RESPOND**

Opposer is allowed until **FIFTEEN DAYS** from the mailing date of this order to file its response, if it so desires. If no response is filed, applicant's motion to set aside the default may be granted as conceded and dates will be reset.

Proceedings herein are otherwise **SUSPENDED** pending disposition of applicant's motion.

***The following information is provided as a courtesy to assist applicant in drafting an acceptable answer:***

Applicant's answer must comply with Federal Rule 8(b).

Fed. R. Civ. P. 8(b) provides, in part:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall **admit or deny** the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

Form of Answer

An answer should bear at its top a heading, similar to the caption above, stating: "IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD," followed by the proceeding number (e.g., "Opposition No. 91212383"), the name of the proceeding (e.g., "Monster Energy Company v. Monsters and Machines, LLC"), and a title describing the nature of the paper (e.g., "ANSWER," "ANSWER AND COUNTERCLAIM," etc.). See TBMP § 311.01(a).

The answer must contain admissions or denials of the allegations in the complaint and may include any defenses to those allegations. Applicant should not argue the

merits of the allegations in a complaint but rather should simply state, as to each of the allegations contained in the complaint, that the allegation is either admitted or denied. See Trademark Rule 2.106(b)(1); Fed. R. Civ. P. 8(b); *Turner Entm't Co. v. Ken Nelson*, 38 USPQ2d 1942 (TTAB 1996) (applicant's answers were argumentative and nonresponsive and Board was ultimately forced to interpret the answer). If applicant does not have sufficient information to admit or deny an allegation, applicant may so state, and this statement will have the effect of a denial as to that allegation. Applicant may also assert any affirmative defenses it believes are appropriate in additional numbered paragraphs. See Trademark Rule 2.106(b)(1); *Order of Sons of Italy in Am. v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221, 1222 (TTAB 1995).

Finally, the answer, like all other papers filed during this proceeding, must be signed by applicant and served on opposer. See Trademark Rule 2.119(a)-(b). The answer must include proof that service has been made, i.e. a certificate of service, consisting of a statement signed by the filing party, or by its attorney or other authorized representative, clearly stating the date and manner in which service was made.

**PRO SE INFORMATION**

A. Legal Representation Is Encouraged

The Board notes that applicant currently represents himself. Applicant may do so. However, it should be noted that while Patent and Trademark Rule 11.14 permits any party to represent itself, it is advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. In addition, as the impartial decision maker, the Board may not provide legal advice, though it may provide information as to procedure.

If applicant does not retain counsel, then applicant will have to familiarize himself with the rules governing this proceeding. Applicant is further advised that pro se parties are not entitled to any special treatment by the Board and strict compliance with the Trademark Rules of Practice and all other applicable rules is expected of all parties, even those representing themselves.

It is recommended that applicant obtain a copy of the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice, and is available for a fee from U.S. Government

Printing Office on the World Wide Web at

<http://bookstore.gpo.gov>.

Applicant may also refer to the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice, both available on the USPTO website at

<http://www.uspto.gov/index.jsp>. The first revision of the second edition (March 2004) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at [www.uspto.gov/web/offices/dcom/ttab/tbmp/](http://www.uspto.gov/web/offices/dcom/ttab/tbmp/). The

Board's main webpage at

<http://www.uspto.gov/trademarks/process/appeal/index.jsp>

includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), and Frequently Asked Questions about Board proceedings.

Applicant should note that any paper it is required to file with the Board **should not take the form of a letter; proper format should be utilized**. The form of submissions is governed by Trademark Rule 2.126. *See also* TBMP § 106.03. In particular, "a paper submission must be printed in at least 11-point type and double-spaced, with text on one side only of each sheet" and text "in an electronic submission must be in at least 11-point type and double-spaced." Trademark Rule 2.126(a)(1) and 2.126(b).

While it is true that the law favors judgments on the merits wherever possible, it is also true that the Patent and Trademark Office is justified in enforcing its procedural deadlines. *Hewlett-Packard v. Olympus*, 18 USPQ2d 1710 (Fed. Cir. 1991). In that regard, the parties should note that any paper they are required to file herein must be received by the Board by the due date, unless one of the filing procedures set forth in Trademark Rules 2.197 and 2.198 is utilized.

**Strict compliance with the Trademark Rules of Practice and where applicable, the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.**

B. Nature of Board Proceedings

An opposition proceeding before the Board is similar in many ways to a civil action in a Federal district court. There are pleadings, a wide range of possible motions; discovery (a party's use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. Unlike the case in a civil proceeding, the Board does not preside at the taking of testimony. Rather, all testimony is taken by deposition

during the assigned testimony, or trial, periods, and the written transcripts, together with any exhibits, are then filed with the Board. No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.

C. Electronic Resources

All parties may refer to the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") and the Trademark Rules of Practice, both available on the USPTO website, [www.uspto.gov](http://www.uspto.gov). The TTAB homepage provides electronic access to the Board's standard protective order, and answers to frequently asked questions. Other useful resources include the ESTTA filing system<sup>1</sup> for Board filings and TTABVUE for status and prosecution history. Files of TTAB proceedings can now be examined using TTABVue, accessible at <http://ttabvue.uspto.gov/ttabvue>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format.

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<sup>1</sup> Use of electronic filing with ESTTA is strongly encouraged. This electronic filing system operates in real time and provides filers with confirmation that the filing has been received. When papers are filed through ESTTA the papers must still be served on the other party to the proceeding.

While electronic filing is preferred, papers may also be filed by mail. The parties should refer to TBMP §§ 107-111 for information on filing by mail.

D. Service of Papers

As noted earlier in this order, Trademark Rule 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or the other party itself, if unrepresented, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may file in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as *prima facie* proof of service.

E. Option of Email Service

The parties may agree to email service under Trademark Rule 2.119(b)(6) ("Electronic transmission when mutually agreed upon by the parties.").<sup>2</sup> Should the parties decide to continue using traditional service options, the parties may consider at least agreeing to courtesy email notification when any paper is served.

Further Information

If the parties have questions regarding electronic filing or procedural matters, they may call the Board at (571) 272-8500 or (800) 786-9199 (toll free). The Board may not give legal advice or discuss substantive matters with either party without the presence of the other.

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<sup>2</sup> The additional five days available under Trademark Rule 2.119(c) for traditional service modes (e.g., First Class Mail) is not available for email service.