

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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General Contact Number: 571-272-8500

CME

Mailed: July 28, 2015

Opposition No. 91219888

4Life Trademarks, LLC

v.

Senuvo LLC

By the Trademark Trial and Appeal Board:

This case now comes up on Opposer's motion, filed March 25, 2015, to dismiss Applicant's counterclaim, Applicant's combined response and cross-motion for leave to amend, filed April 14, 2015 and accompanied by a proposed amended answer and counterclaim, and Opposer's combined reply and response to Applicant's cross-motion to amend, filed April 28, 2015.

Applicant's amended answer and counterclaim was filed as a matter of course, and is accordingly accepted and is now Applicant's operative pleading in this proceeding. *See* Fed. R. Civ. P. 15(a)(1)(B) ("A party may amend its pleading once as a matter of course within ..., if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e) or (f), whichever is earlier."). Opposer's motion to dismiss is directed at the original counterclaim filed with Applicant's answer, which has now been superseded by Applicant's amended answer and counterclaim.

Accordingly, Opposer's motion to dismiss is moot and will be given no further consideration.

In its reply brief, Opposer objects to Applicant's amended answer and counterclaim, arguing that: (i) the Section 18 restriction that Applicant seeks will not preclude a likelihood of confusion, *see* Reply, pp. 1-3 ("Regardless of restrictions on distributors, consumers familiar with Opposer's mark who then encounter Applicant's mark (via distributor, online, etc.) are still likely to be confused."); and (ii) Opposer is using its mark in a manner that will be effectively excluded from the proposed restriction. *See id.* at p. 4 ("[T]he attempted amendment to add the 'marketed via network marketing' is also factually incomplete, as both parties market their goods over the internet in a high profile manner, in addition to network marketing and other means of distribution. It would be manifestly unfair and futile to add restrictions that are inconsistent with what the parties are actually openly doing."). Such arguments do not concern the sufficiency of Applicant's pleading, but rather concern whether Applicant can *prove* its asserted counterclaim. As such, the arguments in Opposer's reply brief are in the nature of a motion for summary judgment, which is premature at this stage in the proceeding as there is no indication that Opposer has served its initial disclosures. Trademark Rule 2.127(e)(1) ("A party may not file a motion for summary judgment until the party has made its initial disclosures ..."). Accordingly, the arguments set forth in Opposer's reply brief also will be given no further consideration.

Proceedings are resumed and answer, disclosure, discovery, trial and other dates are reset as follows:

Answer to Counterclaim Due	September 2, 2015
Deadline for Discovery Conference	October 2, 2015
Discovery Opens	October 2, 2015
Initial Disclosures Due	November 1, 2015
Expert Disclosures Due	February 29, 2016
Discovery Closes	March 30, 2016
Plaintiff's Pretrial Disclosures	May 14, 2016
30-day testimony period for Plaintiff's testimony to close	June 28, 2016
Defendant/Counterclaim Plaintiff's Pretrial Disclosures	July 13, 2016
30-day testimony period for defendant and plaintiff in the counterclaim to close	August 27, 2016
Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due	September 11, 2016
30-day testimony period for defendant in the counterclaim and rebuttal testimony for plaintiff to close	October 26, 2016
Counterclaim Plaintiff's Rebuttal Disclosures Due	November 10, 2016
15-day rebuttal period for plaintiff in the counterclaim to close	December 10, 2016
Brief for plaintiff due	February 8, 2017
Brief for defendant and plaintiff in the counterclaim due	March 10, 2017

Brief for defendant in the counterclaim and reply
brief, if any, for plaintiff due

April 9, 2017

Reply brief, if any, for plaintiff in the
counterclaim due

April 24, 2017

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.
