

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

GCP

Mailed: August 19, 2015

Opposition No. 91220652

Blue Cross and Blue Shield Association

v.

*Sisters of Charity of Leavenworth Health
System, Inc.*

By the Trademark Trial and Appeal Board:

This case now comes before the Board for consideration of Opposer's motion (filed May 15, 2015) to dismiss Applicant's counterclaim filed on March 27, 2015 for failure to state a claim upon which relief may be granted.

On June 4, 2015, Applicant filed a timely response to the motion to dismiss, as well as an amended answer and counterclaim.

Fed. R. Civ. P. 15 states, in relevant part, that "[a] party may amend its pleading once as a matter of course within...21 days after service of a motion under Rule 12(b)...." Fed. R. Civ. P. 15(a)(1)(B). Because Applicant filed its amended pleading within 21 days from the date Opposer filed its motion to dismiss, Applicant's amended answer and counterclaim filed on June 4, 2015 is accepted as a matter of course and now constitutes Applicant's operative pleading in this matter. In view thereof, Opposer's motion to dismiss Applicant's originally-filed counterclaim is deemed moot and will be given no further consideration.

Opposition No. 91220652

As a final matter, the Board notes that four of Opposer's pleaded registrations have been canceled for failure to file timely Section 8 affidavits, i.e., Registration Nos. 1632320, 1639079, 3506616, and 3506617. Accordingly, Opposer may no longer rely upon these registrations in support of its asserted claims.

Trial Schedule

Proceedings are hereby resumed. Trial dates, beginning with the deadline to file an answer to Applicant's amended counterclaim, are reset as follows:

Answer to Amended Counterclaim Due	September 8, 2015
Deadline for Discovery Conference	October 8, 2015
Discovery Opens	October 8, 2015
Initial Disclosures Due	November 7, 2015
Expert Disclosures Due	March 6, 2016
Discovery Closes	April 5, 2016
Plaintiff's Pretrial Disclosures Due	May 20, 2016
30-day testimony period for plaintiff's testimony to close	July 4, 2016
Defendant/Counterclaim Plaintiff's Pretrial Disclosures Due	July 19, 2016
30-day testimony period for defendant and plaintiff in the counterclaim to close	September 2, 2016
Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due	September 17, 2016
30-day testimony period for defendant in the counterclaim and rebuttal testimony for plaintiff to close	November 1, 2016
Counterclaim Plaintiff's Rebuttal Disclosures Due	November 16, 2016
15-day rebuttal period for plaintiff in the counterclaim to close	December 16, 2016
Brief for plaintiff due	February 14, 2017
Brief for defendant and plaintiff in the counterclaim due	March 16, 2017

Opposition No. 91220652

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

April 15, 2017

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

April 30, 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.