

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

DUNN

Mailed: June 24, 2015

Opposition No. 91221038

Abercrombie & Fitch Trading Co.

v.

Western Rise, LLC

Elizabeth A. Dunn, Attorney (571-272-4267):

On April 21, 2015, Applicant served its counterclaim to cancel Opposer's pleaded registrations as abandoned. On May 26, 2015, in lieu of an answer, Opposer filed a motion to dismiss the counterclaim for failure to state a claim for relief under Fed. R. Civ. P. 12(b)(6). On June 15, 2015, Applicant served an amended counterclaim. On June 23, 2015, Opposer filed a motion for entry of judgment as a Fed. R. Civ. P. 11 sanction because Applicant's counterclaim is frivolous.

Pursuant to Fed. R. Civ. P. 15(a)(1), made applicable to Board proceedings by Trademark Rule 2.116(a), a party may amend its pleading once as a matter of course within 21 days after service of a motion under Fed. R. Civ. P. 12(b), (e) or (f). *See* Trademark Rule 2.107/2.115; TBMP § 507.01. Applicant's amended counterclaim was filed as a matter of course, and is accepted as Applicant's operative pleading in this proceeding. *See* Fed. R. Civ. P. 15(a)(1)(A) and (B).

Inasmuch as Opposer's motion for sanctions was filed more than twenty-one days after its service upon Applicant, was presented as a distinct and separate motion, and details Applicant's allegedly offensive filing, the motion satisfies the requirements of the "safe harbor" provision of Fed. R. Civ. P. 11(c)(2). *See NSM Res. Corp. v. Microsoft Corp.*, 113 USPQ2d 1029, 1037 (TTAB 2014). Inasmuch as Opposer seeks judgment as a sanction, the motion is potentially-dispositive, and proceedings herein are suspended pending the Board's disposition of the motion.

If proceedings resume, Opposer's time to file its answer to the amended counterclaim will be reset.