

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: September 17, 2015

Opposition No. 91222962

Heart of Success, Inc.

v.

Angel Quintana

By the Trademark Trial and Appeal Board:

This case now comes before the Board for consideration of Applicant's motion (filed August 28, 2015) to dismiss Opposer's notice of opposition for failure to state a claim upon which relief may be granted under Fed. R. Civ. P. 12(b)(6).¹ In response to Applicant's motion, Opposer filed an amended notice of opposition on September 11, 2015.

Fed. R. Civ. P. 15(a)(1)(B) provides that "[i]f the pleading is one to which a responsive pleading is required, the pleading may be amended once as a matter of course at any time within 21 days after the responsive pleading is served, or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Here, Applicant's motion to dismiss does not constitute a responsive pleading and because Opposer filed and served an amended pleading within 21 days after service

¹ Appearance of counsel on behalf of Applicant filed on August 12, 2015 and Applicant's change of correspondence address filed on August 28, 2015 are noted. Board records have been updated accordingly.

Opposition No. 91222962

of Applicant's motion to dismiss, Opposer's amended notice of opposition is accepted as a matter of course and now constitutes Opposer's operative pleading in this case. *See* Fed. R. Civ. P. 15(a)(1)(B) and 15 U.S.C. § 1065.

In view thereof, Applicant's motion to dismiss Opposer's originally-filed notice of opposition is deemed moot and will be given no further consideration.

As a final matter, the Board has *sua sponte* reviewed Opposer's amended pleading and notes that Opposer has alleged a claim of likelihood of confusion under Section 2(d) of the Trademark Act as the sole ground for opposition. The Board finds that Opposer's allegations regarding its standing, as well as its asserted claim of likelihood of confusion, are sufficiently pleaded.

Accordingly, proceedings herein are resumed and Applicant is allowed until **October 7, 2015** in which to file and serve an answer to Opposer's amended notice of opposition.

Remaining trial dates are reset as follows:

Deadline for Discovery Conference	11/6/2015
Discovery Opens	11/6/2015
Initial Disclosures Due	12/6/2015
Expert Disclosures Due	4/4/2016
Discovery Closes	5/4/2016
Plaintiff's Pretrial Disclosures Due	6/18/2016
Plaintiff's 30-day Trial Period Ends	8/2/2016
Defendant's Pretrial Disclosures Due	8/17/2016
Defendant's 30-day Trial Period Ends	10/1/2016
Plaintiff's Rebuttal Disclosures Due	10/16/2016
Plaintiff's 15-day Rebuttal Period Ends	11/15/2016

Opposition No. 91222962

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