

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

Mailed: March 4, 2016

Opposition No. 91226202

*ICON Health & Fitness, Inc.*

*v.*

*Mycone Dental Supply Co., Inc.*  
*DBA Keystone Industries*

**Ellen Yowell, Paralegal Specialist:**

On February 5, 2016, Opposer served its notice of opposition. On February 27, 2016, Opposer filed an amended notice of opposition (docket entry 7).<sup>1</sup>

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 serving it, or 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 Fed. R. Civ. P. 12(b), (e) or (f), whichever is earlier. *See* Trademark

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<sup>1</sup> On February 27, 2016, Opposer filed two amended notices of opposition (docket entries 5 and 7) and a notice of withdrawal of docket entry 5. In view thereof, docket entry 5 will receive no consideration. Opposer's appearance of additional counsel filed February 13, 2016 is noted, and the Board's record has been updated to include the email address provided therein. The Board ordinarily will not undertake double correspondence with respect to postal mail. TBMP § 117.02. Opposer is advised that if it wishes to update its address of record with the Board, it may file a change of correspondence address using the Electronic System for Trademark Trials and Appeals (ESTTA) at: <http://estta.uspto.gov/>.

Rule 2.107; TBMP § 507.01. **However, as a practical matter, because the time to answer set by the Board's institution order is 40 days, a plaintiff may amend its complaint once as a matter of course beyond the initial 21 days from serving it until the defendant files either an answer or a motion under Fed. R. Civ. P. 12(b), (e) or (f). See TBMP § 507.02.**

In this case, Applicant has not yet filed an answer or a motion under Fed. R. Civ. P. 12(b), (e) or (f). Accordingly, Opposer's amended notice of opposition was filed as a matter of course, and is accepted as Opposer's operative pleading in this proceeding. See Fed. R. Civ. P. 15(a)(1)(A) and (B).

Applicant is allowed until April 4, 2016 in which to file an answer to the amended notice of opposition.

Accordingly, conferencing, discovery, and trial dates are reset as follows:

Time to Answer	4/4/2016
Deadline for Discovery Conference	5/4/2016
Discovery Opens	5/4/2016
Initial Disclosures Due	6/3/2016
Expert Disclosures Due	10/1/2016
Discovery Closes	10/31/2016
Plaintiff's Pretrial Disclosures	12/15/2016
Plaintiff's 30-day Trial Period Ends	1/29/2017
Defendant's Pretrial Disclosures	2/13/2017
Defendant's 30-day Trial Period Ends	3/30/2017
Plaintiff's Rebuttal Disclosures	4/14/2017
Plaintiff's 15-day Rebuttal Period Ends	5/14/2017

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

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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.