

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: January 19, 2007

Cancellation No. 92045147

Metro Q

v.

Gay & Lesbian Yellow Pages,
Inc.

George C. Pologeorgis, Interlocutory Attorney:

This case comes up for consideration of petitioner's motion (filed September 26, 2006) to amend its petition to cancel. The motion is fully briefed.

Once a responsive pleading is served, FRCP 15(a) allows a moving party to amend its pleading only upon written consent of every adverse party, or by leave of the Board. Leave to amend is freely given when justice so requires. See FRCP 15(a). Accordingly, the Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entering the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party. See, e.g., *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503 (TTAB 1993), and TBMP §507.02. This is so even where, as here, a plaintiff seeks to amend its complaint to plead a claim other than those

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included in the original complaint. See, e.g., *Marmark Ltd. v. Nutrexpa S.A.*, 12 USPQ2d 1843 (TTAB 1986), *recon. denied*, 1 USPQ2d 1304 (TTAB 1986), and TBMP §507.02.

Inasmuch as this case was still in the middle stages of discovery, as reset by the Board, when petitioner filed the motion to amend, and the Board finds that respondent has not demonstrated that any undue prejudice would result from the amendment nor that the amendment would be futile, and because petitioner filed the amendment soon after it learned of the additional ground, the motion to amend is granted.

Respondent has until **THIRTY DAYS** from the mailing date of this order to file an answer to the amended petition to cancel (as corrected through petitioner's filing on October 27, 2006). Discovery and trial dates are reset as follows:¹

THE PERIOD FOR DISCOVERY TO CLOSE:	April 19, 2007
30-day testimony period for party in position of plaintiff to close:	July 18, 2007
30-day testimony period for party in position of defendant to close:	September 16, 2007
15-day rebuttal testimony period for plaintiff to close:	October 31, 2007

¹Since the Board, in its discretion, has reset discovery and trial dates to afford the parties the appropriate additional time to conduct discovery and take testimony since the filing of petitioner's motion to amend, the parties' stipulated motion to extend discovery and trial dates filed on December 14, 2006 is moot and will be given no further consideration.

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