

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

coggins

Mailed: July 6, 2009

Cancellation No. 92046807

FIJI Water Company LLC, and  
Paramount International  
Export, Ltd.

v.

Danone Waters of America, Inc.

**By the Board:**

This case now comes up on respondent's motions (filed April 1, 2009) to change the caption of this proceeding and to dismiss the proceeding for failure to state a claim on which relief can be granted.<sup>1</sup>

Motion to Dismiss

In lieu of an answer, respondent filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6). In opposition to the motion to dismiss, petitioners filed (on May 5, 2009) a motion to amend the petition to cancel concurrently with an amended petition. The Board construes the motion as one under to Fed. R. Civ. P. 15(a) (which provides that a

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<sup>1</sup> Petitioners' consented motion (filed April 21, 2009) to extend time to file a brief in opposition to the motion to dismiss is granted *nunc pro tunc*.

plaintiff may amend its complaint once as a matter of course at any time before an answer thereto is served).

Plaintiffs to proceedings before the Board ordinarily can, and often do, respond to a motion to dismiss by filing, inter alia, an amended complaint. See TBMP Section 503.03 (2d ed. rev. 2004). Inasmuch as the amended petition purports to correct the alleged defects noted by respondent in its motion to dismiss, and purports to state a claim upon which relief can be granted, the amended petition to cancel is accepted pursuant to Fed. R. Civ. P. 15(a), and respondent's motion is denied as moot.

The first amended petition to cancel is the operative pleading herein, and respondent is allowed until August 10, 2009 to file an answer thereto.

Motion to Change Caption

On June 23, 2008, respondent filed a change of name document with the Assignment Services Division of the USPTO; and on April 21, 2009, respondent filed a motion to change the title of this opposition proceeding to reflect respondent's change of name.<sup>2</sup> Inasmuch as petitioners consent thereto (see fn. 1 of the motion for an extension of time and fn. 1 of the First Amended Petition to Cancel) and the change of name document has been recorded, the motion is granted.

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<sup>2</sup> The change of name is recorded at Reel 3801, Frame 0315.

Appearance

The appearance and change of correspondence address (filed April 21, 2009) of counsel for petitioner is noted and entered.

Schedule

The schedule is reset as follows.

Time to Answer	8/10/2009
Deadline for Discovery Conference	9/9/2009
Discovery Opens	9/9/2009
Initial Disclosures Due	10/9/2009
Expert Disclosures Due	2/6/2010
Discovery Closes	3/8/2010
Plaintiff's Pretrial Disclosures	4/22/2010
Plaintiff's 30-day Trial Period Ends	6/6/2010
Defendant's Pretrial Disclosures	6/21/2010
Defendant's 30-day Trial Period Ends	8/5/2010
Plaintiff's Rebuttal Disclosures	8/20/2010
Plaintiff's 15-day Rebuttal Period Ends	9/19/2010

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.