

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: June 3, 2014

Cancellation No. 92058978

Daniel P. Matthews

v.

Black Clouds

**Nicole Thier, Paralegal Specialist:**

On May 20, 2014 the Board suspended proceedings pending disposition of respondent's May 16, 2014, motion to dismiss for failure to state a claim.

On May 28, 2014, petitioner filed an amended petition to cancel which now asserts a likelihood of confusion.

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 Rule 2.107/2.115; 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. Petitioner's amended petition to cancel is accepted as petitioner's operative pleading in this proceeding. *See* Fed. R. Civ. P. 15(a)(1)(A) and (B).<sup>1</sup>

Respondent is allowed until July 12, 2014 in which to file an answer to the amended petition to cancel.

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

Time to Answer	7/12/2014
Deadline for Discovery Conference	8/11/2014
Discovery Opens	8/11/2014
Initial Disclosures Due	9/10/2014
Expert Disclosures Due	1/8/2015
Discovery Closes	2/7/2015
Plaintiff's Pretrial Disclosures	3/24/2015
Plaintiff's 30-day Trial Period Ends	5/8/2015
Defendant's Pretrial Disclosures	5/23/2015
Defendant's 30-day Trial Period Ends	7/7/2015
Plaintiff's Rebuttal Disclosures	7/22/2015
Plaintiff's 15-day Rebuttal Period Ends	8/21/2015

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.

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<sup>1</sup> In view of the foregoing, respondent's May 16, 2014 motion to dismiss is moot.