

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: April 27, 2015

Cancellation No. 92060901

Cupid Charities, Inc.

v.

The DEW, LLC dba Undie Run

Ellen M. Yowell, Paralegal Specialist:

Now before the Board are Petitioner's motion (filed March 27, 2015) to amend its petition to cancel and Respondent's motion (filed April 1, 2015) to suspend the proceedings pending disposition of a civil action.¹

Motion to Amend the Petition to Cancel

On February 18, 2015, Petitioner served its petition to cancel. On March 27, 2015, Petitioner filed an amended petition to cancel.

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*

¹ Respondent's changes of correspondence address filed on April 1, 2015 and April 2, 2015 are noted. The Board's record has been updated accordingly. The Board also notes that Respondent's copy of the Board's March 24, 2015 order was returned as undeliverable. A copy of the order may be viewed using TTABVUE at <http://ttabvue.uspto.gov>.

Trademark Rule 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 was filed as a matter of course, and is accepted as Petitioner's operative pleading in this proceeding. *See* Fed. R. Civ. P. 15(a)(1)(A) and (B).

Motion to Suspend

On April 1, 2015, Respondent filed a motion to suspend this proceeding pending final determination of Civil Action No. 1:15-cv-00348, *Cupid Charities, Inc. v. The DEW, LLC*, filed in the U.S. District Court for the District of Colorado. On April 14, 2015, Petitioner provided its consent thereto. In view thereof, the motion to suspend is granted. *See* Trademark Rules 2.127(a) and 2.117(a).

Accordingly, proceedings are suspended pending final disposition of the civil action.

Within twenty days after the final determination of the civil action, the parties shall so notify the Board so that this proceeding may be called up for appropriate action.² Such notification to the Board should include a copy of any final order or final judgment which issued in the civil action.

² A proceeding is considered to have been finally determined when a decision on the merits of the case (*i.e.*, a dispositive ruling that ends litigation on the merits) has been rendered, and no appeal has been filed therefrom, or all appeals filed have been decided. *See* TBMP § 510.02(b).

During the suspension period, the parties must notify the Board of any address changes for the parties or their attorneys. In addition, the parties are to promptly inform the Board of any other related cases, even if they become aware of such cases during the suspension period. Upon resumption, if appropriate, the Board may consolidate related Board cases.