

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

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Mailed: January 22, 2016

Cancellation No. 92062653

*CrossFit, Inc.*

*v.*

*5280 Realty, Inc. DBA 5280 Realty*

Jennifer Krisp, Interlocutory Attorney:

The Board notes Respondent's December 28, 2015 motion to dismiss the petition to cancel. Said filing also includes a "counterclaim."

Respondent filed the motion to dismiss in lieu of filing an answer. The "counterclaim" is procedurally improper inasmuch as it does not accompany an answer. Accordingly Respondent's "counterclaim" will be given no consideration.

*See* Trademark Rule 2.114(b)(2)(i).<sup>1</sup>

Proceedings are suspended pending disposition of the motion to dismiss.

The parties' January 19, 2016 stipulation to extend dates, to accommodate settlement discussions, is granted. Trademark Rule 2.127(a). Accordingly, as set forth

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<sup>1</sup> Furthermore, Respondent did not submit the required statutory fee(s) for a counterclaim. *See* Trademark Rules 2.6(a)(16) and 2.111(c)(1).

in the stipulation,<sup>2</sup> Petitioner's brief in response to the motion to dismiss **is due February 18, 2016.**

Filings required regarding civil action

In its motion, Respondent notified the Board that the parties are involved in a civil action, Case No. 1:15-cv-00176, pending in the United States District Court, District of Colorado.<sup>3</sup> It is the policy of the Board to suspend proceedings when the parties are involved in a civil action, which may be dispositive of or have a bearing on the Board case. *See* Trademark Rule 2.117(a). To enable the Board to ascertain if suspension is appropriate, Respondent is allowed **twenty days from the mailing date of this order** to file a copy of the pleadings filed in the civil action.<sup>4</sup>

Pro se information

The Board notes that Respondent is representing itself in this proceeding. Although Patent and Trademark Rule 11.14 permits an entity to represent itself, it is **strongly** advisable for a party who is not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with such matters. The United States Patent and Trademark Office (USPTO) cannot aid in the selection of an attorney. As the impartial decision maker, the Board may not provide legal advice; it may provide information solely as to procedure.

Any party who does not retain counsel should be familiar with the authorities governing this proceeding, including the Trademark Trial and Appeal Board

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<sup>2</sup> 5 TTABVUE 3.

<sup>3</sup> 4 TTABVUE 4.

<sup>4</sup> The copies need not be certified copies, but must be clear and legible.

Manual of Procedure (TBMP), and the Trademark Rules of Practice (37 C.F.R. Part 2), both accessible directly from the Board's web page: <http://www.uspto.gov/trademarks/process/appeal/index.jsp>. Also on the Board's web page are links to ESTTA, the Board's electronic filing system<sup>5</sup> at <http://estta.uspto.gov>, and TTABVUE, for case status and prosecution history at <http://ttabvue.uspto.gov/ttabvue>.

Trademark Rules 2.119(a) and (b) require that every paper filed in the USPTO in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney. Proof of service must be made before the paper will be considered by the Board. Accordingly, copies of all papers filed in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. *See* TBMP § 113.03. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a certificate of service as follows:

**I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (name and address of opposing counsel or party).**

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

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<sup>5</sup> The Board strongly encourages parties to file all papers through ESTTA, which operates in real time and provides a tracking number that the filing has been received. For assistance in using ESTTA, call 571-272-8500.

Strict compliance with the Trademark Rules of Practice, and the Federal Rules of Civil Procedure (where applicable), is required of all parties before the Board, whether or not they are represented by counsel. *See McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006).

This *inter partes* proceeding is similar to a civil action in a federal district court. The parties file pleadings and a range of possible motions. This proceeding includes designated times for disclosures, discovery (discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, to ascertain the facts underlying an adversary's case), a trial period, and the filing of briefs. The Board does not preside at the taking of testimony; all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. No paper, document, or exhibit will be considered as evidence unless it has been introduced in evidence in accordance with the applicable rules.