

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

gcp

Mailed: October 19, 2010

Opposition No. 91196853

Top TM, LLC

v.

Hero Nutritional Products, LLC

By the Trademark Trial and Appeal Board:

On October 8, 2010, opposer filed its notice of opposition¹. Thereafter, on October 11, 2010, opposer filed an amended notice of opposition.

A party to an *inter partes* proceeding before the Board may amend its pleading once as a matter of course within 21 days after serving it. See Fed. R. Civ. P. 15(a). An amendment filed as a matter of course need not be accompanied by a motion for leave to amend. See TBMP Section 507.02 (2nd ed. rev. 2004).

¹ On the day opposer filed its notice of opposition, via the Board's ESTTA filing system; the ESTTA filing system inadvertently instituted two opposition proceedings: the instant proceeding and Opposition No. 91196846. While the Board ordinarily dismisses the later-instituted proceeding when duplicate proceedings are instituted, since the Board's institution order was only issued in the latter-instituted case, the Board dismissed the first-instituted case as null and void. See Opposition No. 91196846, Entry No. 5.

Inasmuch as opposer filed its amended notice of opposition within 21 days after filing and serving its initial pleading, opposer's amended notice of opposition is accepted and is now the operative pleading in this case.

Applicant's answer to the amended notice of opposition is due as set forth below.

Moreover, trial dates, including conferencing and disclosure dates, are reset as follows:

Time to Answer Amended Notice of Opposition	11/14/2010
Deadline for Discovery Conference	12/14/2010
Discovery Opens	12/14/2010
Initial Disclosures Due	1/13/2011
Expert Disclosures Due	5/13/2011
Discovery Closes	6/12/2011
Plaintiff's Pretrial Disclosures	7/27/2011
Plaintiff's 30-day Trial Period Ends	9/10/2011
Defendant's Pretrial Disclosures	9/25/2011
Defendant's 30-day Trial Period Ends	11/9/2011
Plaintiff's Rebuttal Disclosures	11/24/2011
Plaintiff's 15-day Rebuttal Period Ends	12/24/2011

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 taking of testimony. Trademark Rule 2.125.

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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.