

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

EJW/ey

Mailed: February 14, 2017

Opposition No. 91222905

4 Pillar Dynasty LLC

v.

Pedro Javier Diaz Rangel, Susana Teran

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

Opposer's Failure to File Trial Brief

The time for Opposer to file a brief on the case has expired, and no brief on the case is of record.

Trademark Rule 2.128(a)(3) provides:

When a party in the position of plaintiff fails to file a main brief, an order may be issued allowing plaintiff until a set time, not less than fifteen days, in which to show cause why the Board should not treat such failure as a concession of the case. If plaintiff fails to file a response to the order, or files a response indicating that plaintiff has lost interest in the case, judgment may be entered against plaintiff. If a plaintiff files a response to the order showing good cause, but does not have any evidence of record and does not move to reopen its testimony period and make a showing of excusable neglect sufficient to support such reopening, judgment may be entered against plaintiff for failure to take testimony or submit any other evidence.

In view of the failure to file a brief, Opposer is allowed until thirty days from the mailing date of this order to show cause why the Board should not treat the failure to file a brief as a concession of the case, failing which a judgment dismissing the

notice of opposition with prejudice will be entered. *See* TBMP §§ 536 and 801.02(a).
Proceedings are otherwise **SUSPENDED**.

Proposed Amendment to Application

A review of the application file reveals that on October 20, 2015, Applicant filed a voluntary amendment to the opposed application with the Trademark Office through TEAS (Trademark Electronic Application System). In view thereof, Applicant is advised of the following:

- (1) A request to amend an application involved in a Board proceeding must be filed with the Board, not with the Trademark Examining Operation. *See* Trademark Rule 2.133; TBMP § 514.01 (2017).
- (2) An application that is the subject of an opposition may not be amended in substance, except with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or upon motion granted by the Board. *See* Trademark Rule 2.133(a). Further, the Board generally defers determination of a pre-trial, unconsented motion to amend the involved application in substance until final decision or until the case is decided upon summary judgment. *See, e.g., Enbridge Inc. v. Excelerate Energy Ltd. Partnership*, 92 USPQ2d 1537, 1539 n.3 (TTAB 2009) (motion to amend identification of goods and dates of use deferred until final hearing); *Space Base Inc. v. Stadis Corp.*, 17 USPQ2d 1216 (TTAB 1990) (motion to amend identification of goods deferred). *See* TBMP § 514.03 (2017).
- (3) Every motion, paper or communication filed with the Board must include proof

of service of a copy on opposing counsel or party, in compliance with Trademark Rule 2.119(a) and (b). Insofar as there is no proof of service of the proposed amendment on Opposer's counsel, the proposed amendment will not be considered.



NOTICE: CHANGES TO THE TRADEMARK TRIAL AND APPEAL BOARD ("BOARD") RULES OF PRACTICE EFFECTIVE JANUARY 14, 2017

The USPTO published a Notice of Final Rulemaking in the Federal Register on October 7 2016, at 81 Fed. Reg. 69950. It sets forth **several** amendments to the rules that govern *inter partes* (oppositions, cancellations, concurrent use) and ex parte appeal proceedings. A correction to the final rule was published on December 12, 2016, at 81 Fed. Reg. 89382.

For complete information, the parties are referred to:

- The Board's home page on the uspto.gov website:
<http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>
- The final rule:
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2069950.pdf>
- The correction to the final rule:
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2089382.pdf>
- A chart summarizing the affected rules and changes:
http://www.uspto.gov/sites/default/files/documents/RulesChart_12_9_16.pdf

For **all** proceedings, including those **already in progress on January 14, 2017**, some of the changes are:

- **All pleadings and submissions must be filed through ESTTA.** Trademark Rules 2.101, 2.102, 2.106, 2.111, 2.114, 2.121, 2.123, 2.126, 2.190 and 2.191.
- Service of all papers must be made by email, unless otherwise stipulated. Trademark Rule 2.119.
- Response periods are no longer extended by five days for service by first-class mail, Priority Mail Express®, or overnight courier. Trademark Rule 2.119.
- Deadlines for submissions to the Board that are initiated by a date of service are 20 days. Trademark Rule 2.119. Responses to motions for summary judgment remain 30 days. Similarly, deadlines for responses to discovery requests remain 30 days.

- All discovery requests must be served early enough to allow for responses prior to the close of discovery. Trademark Rule 2.120. Duty to supplement discovery responses will continue after the close of discovery.
- Motions to compel initial disclosures must be filed within 30 days after the deadline for serving initial disclosures. Trademark Rule 2.120.
- Motions to compel discovery, motions to test the sufficiency of responses or objections, and motions for summary judgment must be filed prior to the first pretrial disclosure deadline. Trademark Rules 2.120 and 2.127.
- Requests for production and requests for admission, as well as interrogatories, are each limited to 75. Trademark Rule 2.120.
- Testimony may be submitted in the form of an affidavit or declaration. Trademark Rules 2.121, 2.123 and 2.125
- New requirements for the submission of trial evidence and deposition transcripts. Trademark Rules 2.122, 2.123, and 2.125.
- For proceedings **filed on or after January 14, 2017**, in addition to the changes set forth above, the Board's notice of institution constitutes service of complaints. Trademark Rules 2.105(a) and 2.113(a).

This is only a summary of the significant content of the Final Rule. All parties involved in or contemplating filing a Board proceeding, regardless of the date of commencement of the proceeding, should read the entire Final Rule.

