

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

BUO

Mailed: October 13, 2016

Opposition No. 91228937

Quest Nutrition, LLC

v.

*Carl Sanko, Steve McCowan and Dannion
Brinkley*

By the Trademark Trial and Appeal Board:

This case comes up on a motion to dismiss under Fed. R. Civ. P. 12(b)(6) filed and signed by Carl Sanko on August 9, 2016. The motion will not be given any consideration as it has been improperly filed. In an *inter partes* proceeding before the Board involving joint applicants who are not represented by counsel, all joint applicants must sign any documents filed with the Board.¹ See Trademark Rule 2.193(e)(2)(ii); TBMP § 106.02. Additionally, inasmuch as the answer filed on August 5, 2016, was similarly signed, it will not be considered as part of the record. In effect, no answer has been filed in this proceeding. Accordingly, a notice of default is entered against Applicants under Fed. R. Civ. P. 55(a). Applicants are allowed until **THIRTY DAYS** from the mailing date of this order to show good cause why judgment by

¹ It is not appropriate for one person to sign a document for another person, as, for example, “John Smith, for John Doe” or “John Doe, by John Smith.”

default should not be entered against them in accordance with Fed. R. Civ. P. 55(b) and to file and serve a sufficient answer. Each defendant must sign a combined, single answer. *Cf.* TMEP § 712.01 (a response to an Office action by joint applicants who are not represented by an attorney must be signed by each of the applicants, since they are individual parties and not a single entity); TBMP § 311.01(b). The answer must comply with the Trademark Rules of Practice, as more fully explained below, and address each allegation set forth in the notice of opposition, and only those allegations, and may assert, in a separate section, any appropriate affirmative defenses, if any, supported by sufficient factual matter; failing which, judgment will be entered against Applicants and the notice of opposition will be sustained. *See* Fed. R. Civ. P. 15(a); TBMP § 507 (2014).

Schedule

The proceeding is **SUSPENDED** pending Applicants' response to this order. Remaining dates will be reset upon resumption of the proceeding.

Pro Se Information

A. Representation

The Board notes that Applicant currently represents himself *pro se*, *i.e.* without assistance from a licensed attorney. It should be noted that, while Patent and Trademark Rule 11.14 permits any party to represent itself, **it is advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters.** The Patent and Trademark

Office cannot aid in the selection of an attorney. In addition, as the impartial decision maker, the Board may not provide legal advice, though it may provide general procedural information.

B. Nature of Board Proceedings

An opposition proceeding before the Board is similar in many ways to a civil action in a Federal district court. There are pleadings (notice of opposition, answers, and, sometimes, a counterclaim), a wide range of possible motions; discovery (a party's use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. Unlike the case in a civil proceeding, the Board does not preside at the taking of testimony. Rather, all testimony is taken by deposition during the assigned testimony, or trial, periods, and the written transcripts, together with any exhibits, are then filed with the Board. No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.

C. Electronic Resources

All parties may refer to the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), the Trademark Act, and the Trademark Rules of Practice, all available on the USPTO website, www.uspto.gov. The TTAB homepage provides electronic access to the Board's standard protective order, and answers to frequently

asked questions. Other useful resources include the ESTTA filing system² for Board filings and TTABVUE for status and prosecution history.

Compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

D. Service of Papers

Trademark Rule 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or the other party itself, if unrepresented, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers that Applicant may file in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as *prima facie* proof of service.

The following is an example of an acceptable Certificate of Service:

² Use of electronic filing with ESTTA — as the parties have done so far — is strongly encouraged. This electronic file system operates in real time and provides filers with confirmation that the filing has been received. When papers are filed through ESTTA, the papers must still be served on the other party to the proceeding.

If the parties have questions about or need assistance with ESTTA, they may call the Board at (571) 272-8500 or (800) 786-9199 (toll free) from 8:30 a.m. until 5:00 p.m. (EST).

While electronic filing is preferred, papers may also be filed by mail. The parties should refer to TBMP §§ 107-111 for information on filing by mail. If ESTTA filing is not possible for any reason, the filer should submit its papers by mail, with a certificate of mailing. *See* TBMP § 110 *et. seq.*

Certificate of Service

The undersigned certifies that a copy of the attached
<describe filing> was served, by first class mail, upon
Opposer at the following address:

Michael Adams
Rutan & Tucker LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626,

on <date>.

/Carl Sanko/