

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: October 6, 2017

Opposition No. 91235565

Max Sales Group, Inc.

v.

808 HI-DR8 LLC

Joi M Wilson, Paralegal Specialist:

On September 6, 2017, Applicant/Counterclaim Plaintiff filed an amended answer and first amended counterclaim.

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* Trademark Rule 2.107/2.115; 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.

Applicant/Counterclaim Plaintiff's amended answer and first amended counterclaim was filed as a matter of course, and is accepted as Applicant/Counterclaim Plaintiff's operative pleading in this proceeding. *See* Fed. R. Civ. P. 15(a)(1)(A) and (B).

Opposer/Counterclaim Defendant is allowed until thirty days from the mailing date of this order to file an answer to the amended counterclaim.¹

Conferencing, discovery and trial dates are reset as follows:

Answer to Counterclaim Due	11/6/2017
Deadline for Discovery Conference	12/6/2017
Discovery Opens	12/6/2017
Initial Disclosures Due	1/5/2018
Expert Disclosures Due	5/5/2018
Discovery Closes	6/4/2018
Pretrial Disclosures Due for Party in Position of Plaintiff in Original Claim	7/19/2018
30-day Trial Period Ends for Party in Position of Plaintiff in Original Claim	9/2/2018
Pretrial Disclosures Due for Party in Position of Defendant in Original Claim and in Position of Plaintiff in Counterclaim	9/17/2018
30-day Trial Period Ends for Party in Position of Defendant in Original Claim, and in Position of Plaintiff in Counterclaim	11/1/2018
Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Original Claim and in Position of Defendant in Counterclaim	11/16/2018
30-day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Original Claim, and in Position of Defendant in Counterclaim	12/31/2018
Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Counterclaim	1/15/2019
15-day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Counterclaim	2/14/2019
Opening Brief for Party in Position of Plaintiff in Original Claim Due	4/15/2019

¹ Opposer/Counterclaim Defendant's Answer to the amended counterclaim filed September 28, 2017 is noted and accepted.

Combined Brief for Party in Position of Defendant in Original Claim and Opening Brief as Plaintiff in Counterclaim Due	5/15/2019
Combined Rebuttal Brief for Party in Position of Plaintiff in Original Claim and Brief as Defendant in Counterclaim Due	6/14/2019
Rebuttal Brief for Party in Position of Plaintiff in Counterclaim Due	6/29/2019
Request for Oral Hearing (optional) Due	7/9/2019

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).