

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: January 10, 2018

Opposition No. 91237913

*Thrival Nutrition, LLC*

*v.*

*Freedom Health, LLC*

**Benjamin U. Okeke, Interlocutory Attorney:**

In lieu of filing an answer, Freedom Health, LLC (“Applicant”) filed a motion to dismiss the notice of opposition filed by Thrival Nutrition, LLC (“Opposer”). 4 TTABVUE. However, Opposer subsequently filed a motion for leave to file an amended notice of opposition, which included Opposer’s proposed amended notice. 5 TTABVUE. Pursuant to Fed. R. Civ. P. 15(a)(1)(B), a party may amend its pleading once as a matter of course within 21 days after service of a motion under Rule 12(b). Accordingly, inasmuch as Opposer’s filing of the amended pleading occurred within 21 days of Applicant’s motion to dismiss under Fed. R. Civ. P. 12(b)(6), the amended notice of opposition is **ACCEPTED** and is now Opposer’s operative pleading in this proceeding. 5 TTABVUE 5-8.

***Motion to Dismiss***

Consequently, inasmuch as Applicant's motion goes to the original notice of opposition, which by this order has been superseded by the amended notice of opposition, Applicant's motion to dismiss is **DENIED** as moot.

***Schedule***

Applicant is allowed until **TWENTY DAYS** from the mailing date of this order to file and serve an answer or otherwise move with respect to the amended notice of opposition.

The remaining conferencing, disclosure, discovery, and trial dates are reset as follows:

Deadline for Discovery Conference	February 15, 2018
Discovery Opens	February 15, 2018
Initial Disclosures Due	March 17, 2018
Expert Disclosures Due	July 15, 2018
Discovery Closes	August 14, 2018
Plaintiff's Pretrial Disclosures Due	September 28, 2018
Plaintiff's 30-day Trial Period Ends	November 12, 2018
Defendant's Pretrial Disclosures Due	November 27, 2018
Defendant's 30-day Trial Period Ends	January 11, 2019
Plaintiff's Rebuttal Disclosures Due	January 26, 2019
Plaintiff's 15-day Rebuttal Period Ends	February 25, 2019
<b>BRIEFS SHALL BE DUE AS FOLLOWS:</b>	
Plaintiff's Main Brief Due	April 26, 2019
Defendant's Main Brief Due	May 26, 2019
Plaintiff's Reply Brief Due	June 10, 2019

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 the taking of testimony. Trademark Rule 2.125.

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Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.