

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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General Contact Number: 571-272-8500

wbc

Mailed: December 10, 2018

Opposition No. 91242927

Terra Tech Corp.

v.

47/72 Inc.

By the Trademark Trial and Appeal Board:

On October 29, 2018, Terra Tech Corp. (“TTC”) in lieu of an answer to 47/72 Inc.’s (“47/72”) counterclaims, filed a motion to dismiss certain of 47/72’s counterclaims, found at 5 TTABVUE, under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. *See* 8 TTABVUE. In response to the motion to dismiss, 47/72 filed an amended answer and counterclaims on November 15, 2018. *See* 11 TTABVUE. On December 5, 2018, TCC file an answer to 47/72’s amended answer and counterclaims.¹

Amended Answer and Counterclaims

A party may respond to a motion to dismiss within twenty-one days after service of a motion to dismiss under Fed. R. Civ. P. 12(b)(6) by filing an amended complaint. *See Dragon Bleu (SARL) v. VENM, LLC*, 112 USPQ2d

¹ The Board presumes the parties’ familiarity with the factual bases for, and arguments made in relation to, the motion and does not recount them here except as necessary to explain the Board’s decision.

1925, 1926 (TTAB 2014); *Fair Indigo LLC v. Style Conscience*, 85 USPQ2d 1536, 1537 (TTAB 2007). Here, 47/72 filed its amended answer and counterclaims within twenty-one days after the motion to dismiss.

TCC filed an answer to 47/72's amended counterclaims on December 5, 2018 and did not file a renewed motion to dismiss. *See* 12 TTABVUE.

In view thereof, 47/72's amended answer and counterclaims are 47/72's operative pleading; TCC's answer to those counterclaims filed December 5, 2018 is TCC's operative pleading.

Dismiss

TCC's motion to dismiss, filed at 8 TTABVUE, is therefore, **moot**.

Dates

Proceedings are resumed, dates are reset as follows:

Deadline for Discovery Conference	January 4, 2019
Discovery Opens	January 4, 2019
Initial Disclosures Due	February 3, 2019
Expert Disclosures Due	June 3, 2019
Discovery Closes	July 3, 2019
Plaintiff's Pretrial Disclosures Due	August 17, 2019
30-day Testimony Period for Plaintiff's Testimony to Close	October 1, 2019
Defendant and Counterclaim Plaintiff's Pretrial Disclosures Due	October 16, 2019
30-day Testimony Period for Defendant and Plaintiff in the Counterclaim to Close	November 30, 2019
Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due	December 15, 2019
30-day Testimony Period for Defendant in the Counterclaim and Rebuttal Testimony for Plaintiff to Close	January 29, 2020
Counterclaim Plaintiff's Rebuttal Disclosures Due	February 13, 2020

15-day Rebuttal Period for Plaintiff in the Counterclaim to Close	March 14, 2020
BRIEFS SHALL BE DUE AS FOLLOWS:	
Brief for Plaintiff Due	May 13, 2020
Brief for Defendant, and Plaintiff in the Counterclaim Due	June 12, 2020
Brief for Defendant in the Counterclaim and Reply Brief, if any, for Plaintiff Due	July 12, 2020
Reply Brief, if any, for Plaintiff in the Counterclaim Due	July 27, 2020

General Information

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).