

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
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November 6, 2018

Opposition No. 91243494

ICON Health & Fitness, Inc.

v.

Jihai Technology (Shenzhen) Co., Ltd

**M. Catherine Faint,
Interlocutory Attorney:**

On October 9, 2018, Applicant filed a proposed amendment to its application Serial No. 87620524, without Opposer's consent and without proof of service on Opposer. Because there is no certificate of service, the amendment will be given no consideration.¹ Trademark Rule 2.119(a).

Answer was due in this proceeding on October 17, 2018, but no answer has been filed.

¹ While the motion states in its heading that it is one with consent, there is no allegation of consent within the body of the motion and it was not served on Opposer. It is the practice of the Board to defer decision on an unconsented amendment until final decision or summary judgment. *See Space Base Inc. v. Stadis Corp.*, 17 USPQ2d 1216 (TTAB 1990).

Accordingly, Applicant is allowed **THIRTY DAYS** from the mailing of this order to show cause why judgment by default should not be entered against Applicant in accordance with Fed. R. Civ. P. 55(b).

NATURE OF BOARD PROCEEDINGS

Applicant appears to be representing itself.² Applicant is advised that an *inter partes* proceeding before the Board is similar to a civil action in a Federal district court. There are pleadings, 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. The Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, 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.

Submissions in Board proceedings must be made via ESTTA, the Electronic System for Trademark Trials and Appeals, and must be in compliance with

² Applicant is advised that if it is appearing *pro se*, all documents must be signed by a person with legal authority to bind a juristic applicant (e.g., a corporate officer). *See, e.g.*, Trademark Rule 2.193(e)(1)(i).

Trademark Rules 2.126(a) and (b). See TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are at <http://estta.uspto.gov/>.

It is recommended that any pro se party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Parties should also be familiar with the Trademark Trial and Appeal Board Manual of Procedure (TBMP), available at <http://www.uspto.gov/trademarksapplication-process/trademark-trial-and-appeal-board-ttab>, the TTABVUE system for viewing the record for all Board proceedings, available at <http://ttabvue.uspto.gov/ttabvue/>, and the Standard Protective Order, available at <https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0>.

Requirement for Service of Papers

Trademark Rules 2.119(a) and (b) require that **every submission filed in a proceeding before the Board must be served** upon the other party or parties, and proper proof of such service must be made before the submission will be considered by the Board. Accordingly, all submissions filed in this proceeding must be accompanied by a statement, signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was made, the name of each party or person upon whom service was made, and the email address or address. *See* TBMP § 113.03. Service must be made by email unless otherwise stipulated, or unless the filing party has satisfied the requirements for another method of service as set

forth in Trademark Rule 2.119(b). The statement will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a Certificate of Service as follows:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) via email (or insert other appropriate method of delivery) to: (set out name, and address or email address of opposing counsel or party).

Signature _____

Date _____

Strict compliance with the Trademark Rules of Practice, and the Federal Rules of Civil Procedure (where applicable), is required of all parties before the Board, whether or not they are represented by counsel. *See McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006).

Schedule

Proceedings are otherwise suspended.