

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
TTAB Assistance Center: 571-272-8500
General Email: TTABInfo@uspto.gov

March 13, 2019

Opposition No. 91244927

Cocoon Apothecary Incorporated

v.

Indie Lee & Co.

Karl Kochersperger, Paralegal Specialist:

On November 23, 2018, the Board forwarded a notice of institution of this proceeding to Opposer. On January 29, 2019 the Board granted an extension of time for Applicant to file its answer and on January 31, 2019, Applicant filed an answer. Applicant filed an amended answer on February 7, 2019.¹ *See* TTABVUE 9.

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

¹ Applicant's filing of February 7, 2019 does not include proof of service. *See* TTABVUE 8. Trademark Rule 2.119(a) states that every submission filed in an *inter partes* proceeding must be served upon the other party or parties, and proof of such service must be made before the submission will be considered. *See* TBMP § 113.02. Accordingly, the Board will give Applicant's filing no consideration.

The Board informed the parties of the rules governing service and the service requirement in the notice of institution. Trademark Rule 2.119(b) sets forth the manner of service. *See also* TBMP § 113.04. The parties may access the record of this proceeding via TTABVUE at <http://ttabvue.uspto.gov/ttabvue/>.

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

Conferencing, discovery and trial dates remain as set.