

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  
General Email: [TTABInfo@uspto.gov](mailto:TTABInfo@uspto.gov)

December 15, 2020

Opposition No. 91264980

*Balance Athletica, LLC*

*v.*

*Drone Racing League, Inc. and Performance  
Drone Works, LLC aka PDW (joined as party  
defendant)*

**Nicole Thier, Paralegal Specialist:**

On November 3, 2020, Applicant filed a motion to substitute party without Opposer's consent.

On November 17, 2020, Opposer filed its response in opposition to the motion, requesting that in the alternative, the parties be joined instead of substituted as party Applicant.

If the mark in an application or registration which is the subject matter of an *inter partes* proceeding before the Board is assigned, and the assignment is recorded in the Assignment Branch of the USPTO, the assignee may be substituted as a party if the assignment occurred prior to the commencement of the proceeding, or the assignor is no longer in existence, or the plaintiff raises no objection to substitution, or the discovery and testimony periods have closed; otherwise, the assignee will be joined, rather than substituted, to facilitate discovery. See TBMP § 512.01.

Applicant's pleaded mark was assigned to Performance Drone Works, LLC aka PDW during this proceeding and such assignment was recorded with the Assignment Branch of the Office on October 2, 2020 at Reel/Frame 7067/0670. In view thereof, the request will be facilitated by joinder rather than substitution. Accordingly, Performance Drone Works, LLC aka PDW is joined as party defendant.

Additionally, Opposer's consented motion, filed December 11, 2020, to suspend this proceeding for 60 days is granted.

Because the parties are negotiating for a possible settlement of this case, proceedings are herein suspended as requested, subject to the right of either party to request resumption at any time.<sup>1</sup> See Trademark Rules 2.117(c) and 2.127(a); and TBMP § 605.02.

If, during the suspension period, either of the parties or their attorneys have a change of address or email address, the Board should be so informed. See Trademark Rule 2.18(b)(1).

In the event that there is no word from either party concerning the progress of their negotiations, upon conclusion of the suspension period, **proceedings shall resume without further notice or order from the Board**, upon the schedule set forth below.

Proceedings Resume: February 10, 2021

Initial Disclosures Due

3/4/2021

---

<sup>1</sup> The parties should note that if proceedings are suspended for a lengthy period of time pursuant to the filing of several motions to suspend for settlement, the Board retains discretion to condition the approval of any future consented or stipulated motion to suspend on a party or the parties providing necessary information about the status of settlement talks, discovery activities, or trial activities, as may be appropriate. See Trademark Rule 2.117(c).

Expert Disclosures Due	7/2/2021
Discovery Closes	8/1/2021
Plaintiff's Pretrial Disclosures Due	9/15/2021
Plaintiff's 30-day Trial Period Ends	10/30/2021
Defendant's Pretrial Disclosures Due	11/14/2021
Defendant's 30-day Trial Period Ends	12/29/2021
Plaintiff's Rebuttal Disclosures Due	1/13/2022
Plaintiff's 15-day Rebuttal Period Ends	2/12/2022
Plaintiff's Opening Brief Due	4/13/2022
Defendant's Brief Due	5/13/2022
Plaintiff's Reply Brief Due	5/28/2022
Request for Oral Hearing (optional) Due	6/7/2022

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).

**TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS**

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in

their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. **Note:** Parties are strongly encouraged to check the entire document before filing.<sup>2</sup> The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the [ESTTA help](#) webpage.

---

<sup>2</sup> To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.