

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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KY

January 5, 2021

Opposition No. 91266269

Pai Skincare Limited

v.

Tara Brands, LLC

Tyrone Craven, Supervisory Paralegal:

I. AMENDED NOTICE OF OPPOSITION

On December 2, 2020, Opposer filed an amended notice of opposition.

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 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; 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.

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

II. MOTION TO SUSPEND

Opposer's consented motion, filed December 29, 2020, to suspend this proceeding for 90 days is granted.

Because the parties are negotiating for a possible settlement of this case, proceedings are suspended, subject to the right of either party to request resumption at any time.¹ *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.² *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.

¹ 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).

² If the parties are (or during the pendency of this proceeding become) parties to another proceeding involving the subject application/registration, the parties must notify the Board so the Board can consider whether consolidation or suspension of proceedings is appropriate.

An answer to the amended pleading must be filed through ESTTA, the Board's Electronic System for Trademark Trials and Appeals. *See* Trademark Rule 2.106(b)(1). Conferencing, disclosure, discovery, and trial dates are reset as follows:

Proceedings Resume: 3/30/2021

Time to Answer Amended Notice of Opposition	4/12/2021
Deadline for Discovery Conference	5/12/2021
Discovery Opens	5/12/2021
Initial Disclosures Due	6/11/2021
Expert Disclosures Due	10/9/2021
Discovery Closes	11/8/2021
Plaintiff's Pretrial Disclosures Due	12/23/2021
Plaintiff's 30-day Trial Period Ends	2/6/2022
Defendant's Pretrial Disclosures Due	2/21/2022
Defendant's 30-day Trial Period Ends	4/7/2022
Plaintiff's Rebuttal Disclosures Due	4/22/2022
Plaintiff's 15-day Rebuttal Period Ends	5/22/2022
Plaintiff's Opening Brief Due	7/21/2022
Defendant's Brief Due	8/20/2022
Plaintiff's Reply Brief Due	9/4/2022
Request for Oral Hearing (optional) Due	9/14/2022

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.³ 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.

³ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.