**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

November 10, 2021

Opposition No. 91271564

*Hofseth BioCare ASA*

*v.*

*Happy Go Healthy, Ltd.*

**Amy Matelski, Paralegal Specialist:**

On September 8, 2021, the Board forwarded a notice of institution of this proceeding to Opposer. On October 18, 2021, Applicant filed a motion to dismiss for failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). On November 8, 2021, 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).

Accordingly, Applicant's motion to dismiss is moot and will be given no consideration.

Applicant is allowed until thirty days from the date of this order to file an answer to the amended notice of opposition.

Conferencing, discovery and trial dates are reset as follows:

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| Time to Answer | 12/10/2021 |
| Deadline for Discovery Conference | 1/9/2022 |
| Discovery Opens | 1/9/2022 |
| Initial Disclosures Due | 2/8/2022 |
| Expert Disclosures Due | 6/8/2022 |
| Discovery Closes | 7/8/2022 |
| Plaintiff's Pretrial Disclosures Due | 8/22/2022 |
| Plaintiff's 30-day Trial Period Ends | 10/6/2022 |
| Defendant's Pretrial Disclosures Due | 10/21/2022 |
| Defendant's 30-day Trial Period Ends | 12/5/2022 |
| Plaintiff's Rebuttal Disclosures Due | 12/20/2022 |
| Plaintiff's 15-day Rebuttal Period Ends | 1/19/2023 |
| Plaintiff's Opening Brief Due | 3/20/2023 |
| Defendant's Brief Due | 4/19/2023 |
| Plaintiff's Reply Brief Due | 5/4/2023 |
| Request for Oral Hearing (optional) Due | 5/14/2023 |

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).