

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

March 2, 2023

Opposition No. 91281645

Lee S Dickinson

v.

Pray Not Prey Apparel, LLC

Mary Beth Myles, Interlocutory Attorney:

On November 8, 2022, the Board forwarded a notice of institution of this proceeding to Opposer.¹ On December 6, 2022, 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 January 10, 2023, Opposer filed an amended notice of opposition.²

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 2.107/2.115; TBMP § 507.01. However, as a practical matter, because the time

¹ Opposer's change of correspondence address, filed January 10, 2023 is noted and entered.

² Opposer's motion to extend its time to respond to the motion to dismiss was granted on January 5, 2023. 8 TTABVUE.

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 **April 3, 2023** to file an answer to the amended notice of opposition.

Conferencing, discovery and trial dates are reset as follows:

Time to Answer	4/3/2023
Deadline for Discovery Conference	5/3/2023
Discovery Opens	5/3/2023
Initial Disclosures Due	6/2/2023
Expert Disclosures Due	9/30/2023
Discovery Closes	10/30/2023
Plaintiff's Pretrial Disclosures Due	12/14/2023
Plaintiff's 30-day Trial Period Ends	1/28/2024
Defendant's Pretrial Disclosures Due	2/12/2024
Defendant's 30-day Trial Period Ends	3/28/2024
Plaintiff's Rebuttal Disclosures Due	4/12/2024
Plaintiff's 15-day Rebuttal Period Ends	5/12/2024
Plaintiff's Opening Brief Due	7/11/2024
Defendant's Brief Due	8/10/2024
Plaintiff's Reply Brief Due	8/25/2024
Request for Oral Hearing (optional) Due	9/4/2024

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).