

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

August 27, 2018

Cancellation No. 92067982

Paradise International Inc.

v.

Adam Summers

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

On April 4, 2018, Respondent filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) on the grounds that the petition to cancel fails to state a claim for which relief can be granted. On May 4, 2018,¹ Petitioner filed a timely response to the motion to dismiss, to which is attached an amended petition to cancel (7 TTABVUE 17).

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 2.115; TBMP § 507.01 (June 2018).

¹ Petitioner's consent motion filed April 23, 2018, to extend its time to respond to the motion to dismiss is granted. *See* Trademark Rule 2.127(a).

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

Accordingly, Respondent's motion to dismiss is moot and will be given no further consideration. Respondent is allowed until **THIRTY DAYS FROM THE MAILING DATE OF THIS ORDER** to file an answer to the amended petition to cancel.

The discovery conference deadline, discovery period, disclosure due dates, and trial dates are reset as follows:

Time to Answer	9/27/2018
Deadline for Discovery Conference	10/27/2018
Discovery Opens	10/27/2018
Initial Disclosures Due	11/26/2018
Expert Disclosures Due	3/26/2019
Discovery Closes	4/25/2019
Plaintiff's Pretrial Disclosures Due	6/9/2019
Plaintiff's 30-day Trial Period Ends	7/24/2019
Defendant's Pretrial Disclosures Due	8/8/2019
Defendant's 30-day Trial Period Ends	9/22/2019
Plaintiff's Rebuttal Disclosures Due	10/7/2019
Plaintiff's 15-day Rebuttal Period Ends	11/6/2019
Plaintiff's Opening Brief Due	1/5/2020
Defendant's Brief Due	2/4/2020
Plaintiff's Reply Brief Due	2/19/2020
Request for Oral Hearing (optional) Due	2/29/2020

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, 37 C.F.R. §§ 2.121-2.125. 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), 37 C.F.R. §§ 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), 37 C.F.R. § 2.129(a).

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