

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

December 1, 2020

Cancellation No. 92075086

Black Rifle Coffee Company LLC

v.

Giancarlo Fantappie

Jill M. McCormack, Interlocutory Attorney:

On September 1, 2020, Petitioner filed its petition to cancel. (1 TTABVUE). On October 13, 2020, Respondent 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). (4 TTABVUE). On November 2, 2020, Petitioner filed an amended petition to cancel. (6 TTABVUE).

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(a)/2.115; TBMP § 507.01.

Petitioner's amended petition to cancel was filed as a matter of course, and is accepted as Petitioner's 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 consideration.¹

Respondent is allowed until **December 21, 2020** to respond to the amended petition to cancel.

Conference, discovery and trial dates are reset as follows:

Time to Answer	12/21/2020
Deadline for Discovery Conference	1/20/2021
Discovery Opens	1/20/2021
Initial Disclosures Due	2/19/2021
Expert Disclosures Due	6/19/2021
Discovery Closes	7/19/2021
Plaintiff's Pretrial Disclosures Due	9/2/2021
Plaintiff's 30-day Trial Period Ends	10/17/2021
Defendant's Pretrial Disclosures Due	11/1/2021
Defendant's 30-day Trial Period Ends	12/16/2021
Plaintiff's Rebuttal Disclosures Due	12/31/2021
Plaintiff's 15-day Rebuttal Period Ends	1/30/2022
Plaintiff's Opening Brief Due	3/31/2022
Defendant's Brief Due	4/30/2022
Plaintiff's Reply Brief Due	5/15/2022
Request for Oral Hearing (optional) Due	5/25/2022

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

¹ The Board also notes Respondent's submission, filed on November 20, 2020, stating that Respondent does not object to Petitioner's amended petition to cancel, "provided that Registrant is allowed an adequate opportunity to timely respond to the Amended Petition to Cancel." (7 TTABVUE 3). Because Petitioner's amended petition was filed as a matter of course, Respondent's submission will be given no further consideration.

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).