

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

October 4, 2021

Cancellation No. 92077737

Upgrade Labs IP, Inc.

v.

Epic Harvest, LLC

Victoria von Vistauxx, Paralegal Specialist:

The Board sent notice of institution of this proceeding to Respondent on August 3, 2021, but received a returned copy of non-delivery.¹ See Trademark Rule 2.118.

After investigation, the Board has obtained a different possible address for Respondent, and believes that service can be effected by remailing the notice of institution to the following:²

**690 SOUTH HWY 89 STE 200
JACKSON WY 83001
UNITED STATES**

¹ The Board encourages trademark owners to exercise due diligence in monitoring the status of their applications and registrations, and their correspondence information, online through the USPTO website and databases accessible from the website. Every party is responsible for ensuring that the Board has its current email and correspondence address. If a party fails to notify the Board of a change of address, with the result that the Board is unable to serve correspondence on the party, default judgment may be entered against the party. See TBMP § 117.07.

² On September 22, 2021, ESTTA, the Electronic System for Trademark Trial and Appeal Board, issued a notice of default for Respondent's failure to file an answer to the petition to cancel (4 TTABVUE). However, in view of the instant order, the notice of default is hereby discharged.

Accordingly, the notice of institution is remailed as indicated above.³

Respondent is allowed until **FORTY (40) DAYS** from the date of this order in which to file a change of correspondence form through ESTTA informing this Office of its current correspondence address and email address. Compliance with Trademark Rule 2.193(3) and Trademark 2.119(a) is required.

If there has been any transfer of interest in the involved registration, Respondent must so advise the Board and submit copies of the appropriate documents. *See* Trademark Act § 10 and Patent and Trademark Rules 3.71 and 3.73.

In view of the circumstances, the time for filing an answer to the petition to cancel is extended to **FORTY (40) DAYS** from the date of this order. Notice is hereby given that unless the Respondent listed herein, its assigns or legal representatives, shall enter an appearance, or file an answer or other response to the petition within the time provided in this order, this proceeding may proceed as in the case of default.⁴

If the parties to this proceeding are also parties to any other Board proceedings involving related marks or, during the pendency of this proceeding, become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings. *See* TBMP § 511.

In accordance with the Trademark Rules of Practice, conference, disclosure, discovery and trial dates are reset as indicated below.

Deadline for Discovery Conference

12/13/2021

³ A copy of the petition to cancel can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

⁴ An answer must be filed through ESTTA. *See* Trademark Rule 2.106(b)(1)/2.114(b)(1). Moreover, all submissions to the Board must be made through ESTTA. *See* Trademark Rule 2.126(a). ESTTA is accessible at <http://estta.uspto.gov>.

Discovery Opens	12/13/2021
Initial Disclosures Due	1/12/2022
Expert Disclosures Due	5/12/2022
Discovery Closes	6/11/2022
Plaintiff's Pretrial Disclosures Due	7/26/2022
Plaintiff's 30-day Trial Period Ends	9/9/2022
Defendant's Pretrial Disclosures Due	9/24/2022
Defendant's 30-day Trial Period Ends	11/8/2022
Plaintiff's Rebuttal Disclosures Due	11/23/2022
Plaintiff's 15-day Rebuttal Period Ends	12/23/2022
Plaintiff's Opening Brief Due	2/21/2023
Defendant's Brief Due	3/23/2023
Plaintiff's Reply Brief Due	4/7/2023
Request for Oral Hearing (optional) Due	4/17/2023

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, matters in evidence, the manner and timing of taking testimony, 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.⁵ 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.

⁵ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.