

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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July 27, 2022

Cancellation No. 92079910

*Lord Bernier Inc.*

*v.*

*Rising Beauty Inc.*

**Chaunte Austin, Paralegal Specialist:**

On June 10, 2022, the Board forwarded a notice of institution of this proceeding to Respondent. On July 19, 2022, 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). On July 22, 2022, Petitioner filed an amended petition to cancel.

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 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.

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.

Respondent is allowed until thirty days from the date of this order to file an answer to the amended petition to cancel.

Conferencing, discovery and trial dates are reset as follows:

Time to Answer	8/26/2022
Deadline for Discovery Conference	9/25/2022
Discovery Opens	9/25/2022
Initial Disclosures Due	10/25/2022
Expert Disclosures Due	2/22/2023
Discovery Closes	3/24/2023
Plaintiff's Pretrial Disclosures Due	5/8/2023
Plaintiff's 30-day Trial Period Ends	6/22/2023
Defendant's Pretrial Disclosures Due	7/7/2023
Defendant's 30-day Trial Period Ends	8/21/2023
Plaintiff's Rebuttal Disclosures Due	9/5/2023
Plaintiff's 15-day Rebuttal Period Ends	10/5/2023
Plaintiff's Opening Brief Due	12/4/2023
Defendant's Brief Due	1/3/2024
Plaintiff's Reply Brief Due	1/18/2024
Request for Oral Hearing (optional) Due	1/28/2024

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).