

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

September 27, 2023

Cancellation No. 92080282

Icon Muscle LLC

v.

Be Well Nutrition, Inc.

Nicole Thier, Paralegal Specialist:

On September 25, 2023, Respondent filed a motion to substitute party with Opposer's consent.

If the mark in an application or registration which is the subject matter of an *inter partes* proceeding before the Board is assigned, and the assignment is recorded in the Assignment Branch of the USPTO, the assignee may be substituted as a party if the assignment occurred prior to the commencement of the proceeding, or the assignor is no longer in existence, or the plaintiff raises no objection to substitution, or the discovery and testimony periods have closed; otherwise, the assignee will be joined, rather than substituted, to facilitate discovery. *See* TBMP § 512.01.

Respondent's pleaded mark was assigned to BWN Acquisition, LLC during this proceeding and such assignment was recorded with the Assignment Branch of the Office on September 19, 2023 at Reel/Frame 8204/0140. Accordingly,

Respondent's request is granted and BWN Acquisition, LLC is substituted as party defendant in this proceeding.

Furthermore, Registrant's consented motion, also filed September 25, 2023, to suspend this proceeding for 90 days to accommodate the parties' ongoing settlement efforts is granted. Proceedings are herein suspended, subject to the right of either party to request resumption at any time. *See* Trademark Rules 2.117(c) and 2.127(a); and TBMP §605.02.

If, during the suspension period, either of the parties or their attorneys have a change of address or email address, the Board should be so informed. *See* Trademark Rule 2.18(b)(1).

In the event that there is no word from either party concerning the progress of their negotiations, upon conclusion of the suspension period, **proceedings shall resume without further notice or order from the Board**, upon the schedule set forth below.

An answer must be filed through ESTTA, the Board's Electronic System for Trademark Trials and Appeals. *See* Trademark Rule 2.114(b)(1). Conferencing, disclosure, discovery, and trial dates are reset as follows:

Proceedings Resume: January 2, 2023

Time to Answer	1/13/2024
Deadline for Discovery Conference	2/12/2024
Discovery Opens	2/12/2024
Initial Disclosures Due	3/13/2024
Expert Disclosures Due	7/11/2024
Discovery Closes	8/10/2024
Plaintiff's Pretrial Disclosures Due	9/24/2024
Plaintiff's 30-day Trial Period Ends	11/8/2024

Defendant's Pretrial Disclosures Due	11/23/2024
Defendant's 30-day Trial Period Ends	1/7/2025
Plaintiff's Rebuttal Disclosures Due	1/22/2025
Plaintiff's 15-day Rebuttal Period Ends	2/21/2025
Plaintiff's Opening Brief Due	4/22/2025
Defendant's Brief Due	5/22/2025
Plaintiff's Reply Brief Due	6/6/2025

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).

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.¹ 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.

¹ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.