

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

August 16, 2024

Cancellation No. 92085366

New Wave Enterprise LLC

v.

Breeze Smoke LLC

Charles H. Hiser IV, Interlocutory Attorney:

This case now comes up on Respondent's motion to dismiss filed July 17, 2024, and Petitioner's combined opposition to the motion for dismissal, motion for leave to amend the pleading and proposed amended petition for cancellation, filed August 6, 2024.

Petitioner filed its amended petition for cancellation within twenty-one days after Respondent served its motion to dismiss. Accordingly, Petitioner's amended petition for cancellation is accepted as a matter of course and is now Petitioner's operative pleadings. Fed. R. Civ. P. 15(a)(1)(B); TBMP § 507.01 (2024).

Because Respondent's motion is directed to Petitioner's original petition for cancellation, which by this order has been superseded by the amended petition for cancellation, Respondent's motion is **moot** and will be given no further consideration. Petitioner's motion for leave to amend the petition for cancellation is

also **moot** and will be given no further consideration as the new pleading was accepted by function of the Rules.¹

Proceedings are resumed and dates are reset as follows:

Time to Answer	9/13/2024
Deadline for Discovery Conference	10/13/2024
Discovery Opens	10/13/2024
Initial Disclosures Due	11/12/2024
Expert Disclosures Due	3/12/2025
Discovery Closes	4/11/2025
Plaintiff's Pretrial Disclosures Due	5/26/2025
Plaintiff's 30-day Trial Period Ends	7/10/2025
Defendant's Pretrial Disclosures Due	7/25/2025
Defendant's 30-day Trial Period Ends	9/8/2025
Plaintiff's Rebuttal Disclosures Due	9/23/2025
Plaintiff's 15-day Rebuttal Period Ends	10/23/2025
Plaintiff's Opening Brief Due	12/22/2025
Defendant's Brief Due	1/21/2026
Plaintiff's Reply Brief Due	2/5/2026
Request for Oral Hearing (optional) Due	2/15/2026

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

¹ Petitioner is reminded that all filings made at the Board must include a proof of service. TBMP § 113.02. The amended pleading, 9 TTABVUE, was served but it does not appear that Petitioner's response to the motion to dismiss, 8 TTABVUE, was served.

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). Such briefs should utilize citations to the TTABVue record created during trial, to facilitate the Board's review of the evidence at final hearing. 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).