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

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January 22, 2025

Cancellation No. 92086350

Advanced Bionutritionals, L.L.C.

v.

Advanced, LLC

By the Trademark Trial and Appeal Board:

On November 20, 2024, the Board issued a notice of default against Respondent for failure to file an answer. Respondent responded the next day detailing the facts as to why the answer was not submitted, but an answer was not included with the filing. On December 4, 2024, the Board did not set aside the notice of default but gave Respondent twenty days to answer the petition to cancel. Respondent filed a paper titled "answer" on December 24, 2024.

The Board presumes that the December 24, 2024 communication is intended as Respondent's answer to the petition to cancel. However, said communication does not comply with Fed R. Civ. P. 8(b), which is made applicable to this proceeding by Trademark Rule 2.116(a).

Fed. R. Civ. P. 8(b) provides, in part:

(b) Defenses; Admissions and Denials.

> (1) *In General.* In responding to a pleading, a party must:
>
> (A) state in short and plain terms its defenses to each claim asserted against it; and
>
> (B) admit or deny the allegations asserted against it by an opposing party.
>
> (5) *Lacking Knowledge or Information.* A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

The December 24th "answer" is insufficient because it merely contains five affirmative defenses. The petition to cancel filed by Petitioner consists of twenty-three (23) paragraphs setting forth the basis of Petitioner's claim of damage. In accordance with Fed. R. Civ. P. 8(b), Respondent must answer the petition to cancel **by specifically admitting or denying the allegations contained in each paragraph. If Respondent is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.** Trademark Rule 2.114(b)(2). In practice, this means that Respondent's answer should consist of twenty-three (23) numbered paragraphs in the petition for cancellation, followed by "admit," "deny," or "Respondent lacks sufficient information to form a belief about the truth of the allegations and therefore denies them", as is appropriate for each numbered paragraph. Furthermore, at this pleading stage, Respondent can offer affirmative defenses but should not argue the merits of the allegations in the petition for cancellation nor provide evidence thereto. *Id.* Rather, Respondent must answer the petition for cancellation by fairly responding to the substance of the allegations set forth in it.

Moreover, all submissions to the Board must be in at least 11-point type and must be double-spaced. *See* TBMP § 311.01. For a detailed explanation of the requirements pertaining to the form of submissions to the Board, Respondent is directed to read Trademark Rule 2.126, 37 C.F.R. § 2.126.

In view of the foregoing, Respondent is allowed until **twenty days from the date of this order** in which to file through ESTTA pursuant to Trademark Rule 2.114(b)(1)[1], and serve pursuant to Trademark Rule 2.119(b), an answer which complies with Fed. R. Civ. P. 8(b).

Proceedings remain **suspended**.

Information Regarding Legal Representation

It is noted that Respondent intends to represent itself in this proceeding. While Patent and Trademark Rule 11.14 permits a party domiciled in the United States to represent itself, it is strongly advisable for a party who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 114.02 (2021).

Trademark Rules 2.119(a) and (b) require that every submission filed in a proceeding before the Board must be served upon the other party or parties, and

[1] Instructions and forms for filing through ESTTA are available at http://estta.uspto.gov. All Board proceeding files can be viewed via TTABVUE at http://ttabvue.uspto.gov.

proper proof of such service must be made before the submission will be considered by the Board. Accordingly, all submissions filed in this proceeding must be accompanied by a statement, signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was made, the name of each party or person upon whom service was made, and the email address or address. *See* TBMP § 113.03. Service must be made by email unless otherwise stipulated, or unless the filing party has satisfied the requirements for another method of service as set forth in Trademark Rule 2.119(b). The statement will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a Certificate of Service as follows:

> I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, address, and email address of opposing counsel or party).
>
> Signature_____
>
> Date_____

Submissions in Board proceedings must be made via ESTTA, the Electronic System for Trademark Trials and Appeals, and must be in compliance with Trademark Rules 2.126(a) and (b). *See* TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are at http://estta.uspto.gov/.

It is recommended that any pro se party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Parties should also be familiar with the Trademark Trial and Appeal

Board Manual of Procedure (TBMP), available at http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab, the TTABVUE system for viewing the record for all Board proceedings, available at http://ttabvue.uspto.gov/ttabvue/, and the Standard Protective Order, available at https://www.uspto.gov/sites/default/files/documents/Standard%20Protective%20Order_02052020.pdf.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006); *see also Hole In 1 Drinks, Inc. v. Lajtay*, 2020 USPQ2d 10020, at *1 (TTAB 2020) (noting that compliance with the Trademark Rules of Practice, and where applicable, the Federal Rules of Civil Procedure and the Federal Rules of Evidence, is required of all parties even those who assume the responsibility and risk of representing themselves).