

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](mailto:TTABInfo@uspto.gov)

November 21, 2018

Opposition No. 91244897  
Serial No. 87889362

DEITS, TED

7866 SOUTHWIND CR  
HUNTINGTON BEACH, CA 92648

*Monster Energy Company*

*v.*

*Deits, Ted*

Alexander D. Zeng  
Knobbe, Martens, Olson & Bear LLP  
2040 Main Street, 14th Floor  
Irvine, CA 92614

**ESTTA936715**

#### **NOTICE OF INSTITUTION**

The opposer (plaintiff) identified above has filed a notice of opposition to the registration sought by applicant (defendant) in the above-identified application. This notice of institution is forwarded pursuant to Trademark Rules 2.105(b) and (c), and constitutes service of the notice of opposition on applicant. An electronic version of the notice of opposition is viewable on TTABVUE at <http://ttabvue.uspto.gov/ttabvue/>. See Trademark Rule 2.105(a). The parties should diligently monitor this proceeding via TTABVUE.

#### **APPLICANT MUST FILE ANSWER THROUGH ESTTA**

As required in the schedule below, **applicant must file an answer within forty (40) days from the date of this order.** Failure to file a timely answer may result in the entry of default judgment and abandonment of the application. Regarding

when a deadline falls on a Saturday, Sunday or federal holiday, *see* Trademark Rule 2.196. Applicant must file the answer through ESTTA - Electronic System for Trademark Trials and Appeals, unless ESTTA is unavailable due to technical problems or extraordinary circumstances are present. An answer filed on paper under these limited circumstances must be accompanied by a Petition to the Director (and the required fee under Trademark Rule 2.6). *See* Trademark Rule 2.106(b)(1). In substance, applicant's answer must comply with Fed. R. Civ. P. 8(b); it must admit or deny the allegations in the notice of opposition, and may include available defenses and counterclaims. Regarding the form and content of an answer, *see* Trademark Rule 2.106(b)(2) and TBMP § 311.

#### **DUTY TO MAINTAIN ACCURATE CORRESPONDENCE INFORMATION**

Throughout this proceeding, the parties, and their attorneys or representatives, must notify the Board of any correction or update of physical address and email address, and should use the ESTTA change of address form. *See* Trademark Rule 2.18(b); TBMP § 117.

#### **SERVICE OF ANSWER AND OF ALL SUBMISSIONS**

The service of the answer, and all other submissions in this proceeding, and of all matters that are required to be served but not required to be filed in the proceeding record, **must** be by **email** unless the parties stipulate otherwise. Trademark Rule 2.119(b). In the absence of a stipulation, service may be by other means **only** under the **limited** circumstances and in a manner specified in Trademark Rule 2.119(b). Regarding the signing and service of all submissions, *see* TBMP §§ 113-113.04.

The answer, and all other submissions, **must** include proof of service. As noted in TBMP § 113.03, proof of service may be in the following certificate of service form:

*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, and address or email address of opposing counsel or party).*

Signature \_\_\_\_\_

Date \_\_\_\_\_

#### **SUBMIT ALL FILINGS ONLINE VIA ESTTA**

Submissions **must** be filed via ESTTA, the Board's online filing system, unless ESTTA is unavailable due to technical problems or extraordinary circumstances are present. Trademark Rule 2.126(a). Submissions may be filed in paper form **only** under the **limited** circumstances specified in Trademark Rule 2.126(b), with a required written explanation. ESTTA is accessible at the Board's web page:

<http://estta.uspto.gov/>. The page has instructions and tips. ESTTA offers various forms, some of which may require attachments and/or a fee. For technical questions, a party may call 571-272-8500 (Mon. - Fri. 8:30 - 5:00 ET) or email [ESTTA@uspto.gov](mailto:ESTTA@uspto.gov). This proceeding involves several deadlines, and due to potential technical issues, parties should not wait until the deadline to submit filings. The Board may **decline to consider** an untimely submission. Moreover, Trademark Rule 2.126 sets forth the required form and format for all submissions (e.g., page limitations), and the Board may **decline to consider** any submission that does not comply with this rule, including, but not limited to motions, briefs, exhibits, and deposition transcripts.

## CONFERENCE, DISCOVERY, DISCLOSURE AND TRIAL SCHEDULE

Time to Answer	12/31/2018
Deadline for Discovery Conference	1/30/2019
Discovery Opens	1/30/2019
Initial Disclosures Due	3/1/2019
Expert Disclosures Due	6/29/2019
Discovery Closes	7/29/2019
Plaintiff's Pretrial Disclosures Due	9/12/2019
Plaintiff's 30-day Trial Period Ends	10/27/2019
Defendant's Pretrial Disclosures Due	11/11/2019
Defendant's 30-day Trial Period Ends	12/26/2019
Plaintiff's Rebuttal Disclosures Due	1/10/2020
Plaintiff's 15-day Rebuttal Period Ends	2/9/2020
Plaintiff's Opening Brief Due	4/9/2020
Defendant's Brief Due	5/9/2020
Plaintiff's Reply Brief Due	5/24/2020
Request for Oral Hearing (option) Due	6/3/2020

## PARTIES ARE REQUIRED TO HOLD DISCOVERY CONFERENCE

The parties are required to schedule and hold a discovery conference by the deadline in the schedule in this order, or as reset by the Board. In the conference, the parties are required to discuss, at a minimum, 1) the nature and basis of their claims and defenses, 2) the possibility of promptly settling, or at least narrowing the scope of claims or defenses, and 3) arrangements for disclosures, discovery, preserving discoverable information and introduction of evidence at trial. For guidance, see Fed. R. Civ. P. 26(f), Trademark Rule 2.120(a)(2)(i) and TBMP §§ 401.01 and 408.01(a).

The parties must hold the conference in person, by telephone or by a means on which they agree. A Board interlocutory attorney or administrative trademark

judge will participate in the conference either upon request of any party made no later than ten (10) days prior to the conference deadline, or when the Board deems it useful to have Board involvement. *See* Trademark Rule 2.120(a)(2)(i). A request for Board participation must be made either through ESTTA, or by telephone call to the assigned interlocutory attorney named on the TTABVUE record for this proceeding. A party requesting Board participation should first determine possible dates and times when all parties are available. A conference with a Board attorney's participation will be by telephone in accordance with the Board's instructions.

For efficiency, the parties may stipulate to various procedural and substantive disclosure, discovery and trial matters (*e.g.*, modification of deadlines and obligations) upon written stipulation and approval by the Board. Trademark Rule 2.120(a)(2)(iv) provides a non-exhaustive list of matters to which parties may stipulate. The best practice is to reduce all stipulations to writing. If email service is not practical, such as for voluminous document production in discovery, the parties should discuss in the conference how production will be made. The parties, and their attorneys or representatives, have **a duty to cooperate** in the discovery process. TBMP § 408.01.

### **PROTECTIVE ORDER FOR CONFIDENTIAL INFORMATION**

The Board's Standard Protective Order is automatically imposed in all *inter partes* proceedings, and is available at: <https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0>. During their conference, the parties should discuss whether they will use an alternative or modified protective order, subject to approval by the Board. *See* Trademark Rule 2.116(g) and TBMP § 412. The standard order does not automatically protect confidential information; its provisions for designating confidential information must be utilized as needed by the parties. Trademark Rule 2.126(c) sets forth the procedure for filing confidential submissions.

### **ACCELERATED CASE RESOLUTION (ACR)**

During their conference, the parties are to discuss whether they wish to seek mediation or arbitration, and whether they can stipulate to the Board's Accelerated Case Resolution (ACR) process for a more efficient and cost-effective means of obtaining the Board's determination of the proceeding. For details, and examples of ACR proceedings, *see* TBMP § 528, and the Board's webpage: <http://www.uspto.gov/ttab>.

## **INITIAL DISCLOSURES AND DISCOVERY**

Regarding the deadline for and contents of initial disclosures, *see* Trademark Rules 2.120(a)(1) and (2)(i), and TBMP § 401.02. Regarding deadlines for serving and responding to discovery, *see* Trademark Rule 2.120(a)(3) and TBMP § 403.03. Certain provisions of Fed. R. Civ. P. 26 are applicable in modified form. Note that written discovery (interrogatories, requests for production, requests for admission) must be served **early** enough so that responses will be due **no later than** the close of discovery. Regarding the scope and limits of discovery, *see* TBMP 414; discoverable items may include documents, tangible things, and electronically stored information (ESI).

## **MOTIONS**

Certain provisions of Fed. R. Civ. P. 11 apply to all submissions in Board proceedings. *See* TBMP § 527.02. Regarding available motions, *see* TBMP Chapter 500. Regarding applicable deadlines to respond to motions, depending on the motion filed, *see* Trademark Rules 2.127(a) and (e)(1). When a party timely files a potentially dispositive motion the proceeding is suspended with respect to all matters not germane to the motion. *See* Trademark Rule 2.127(d). In addressing motions or other filings, if it appears to the Board that a telephone conference would be beneficial, or upon request of one or both parties, the Board may schedule a conference. *See* Trademark Rule 2.120(j)(1) and TBMP § 502.06(a).

## **PRETRIAL DISCLOSURES, TRIAL AND BRIEFING**

Regarding the procedures and deadlines for pretrial disclosures and trial, and specifically the noticing, taking, serving and submitting of evidence and testimony, *see* Trademark Rules 2.120(k), 2.121, 2.122, 2.123 and 2.125, as well as TBMP Chapter 700. The parties should review these authorities. For example: witness testimony may be submitted in the form of affidavit or declaration subject to the right to oral cross examination; transcripts of testimony depositions, with exhibits, must be served on each adverse party within thirty (30) days after completion of taking the testimony; certified transcripts and exhibits must be filed, with notice of such filing served on each adverse party; and all notices of reliance must be submitted during the submitting party's assigned testimony period and must indicate generally the relevance the evidence and associate it with one or more issues.

Main briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing is not required, but will be scheduled upon separate notice timely filed pursuant to Trademark Rule 2.129(a). Regarding briefs and oral hearings, *see* TBMP §§ 801-802.

## **LEGAL RESOURCES AVAILABLE AT WEB PAGE**

For a general description of Board proceedings, *see* TBMP §102.03. Proceedings are governed by the Trademark Rules of Practice in Parts 2 and 7 of Title 37 of the Code of Federal Regulations. These rules, the Manual of Procedure (TBMP), infor-

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.