

Mailed: February 13, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Midwest Trading Group, Inc.¹

Application No. 76666044

Myron Amer, Myron Amer, PC, for applicant.

Christopher M. Ott, Examining Attorney, Michael W. Baird,
Managing Attorney, Law Office 116.

**Before Seeherman, Mermelstein, and Bergsman, Administrative
Trademark Judges.**

Opinion by Mermelstein, Administrative Trademark Judge:

Applicant seeks registration of the mark JOURNEY'S
EDGE² (standard characters) for the following goods:

Household goods, namely, household utensils,
namely, graters and kitchen ladles, containers for
kitchen use, namely, pails and metal and plastic
pans, small hand-operated apparatus for mincing,
grinding and pressing, candle extinguishers,
electric hair combs and toothbrushes, dish stands
and decanter stands.

International Class 21.

Procedural History

Upon initial examination, the Examining Attorney issued
an office action, requiring amendment of the identification

¹ Substituted for Glaze, Inc., pursuant to assignment, recorded
on December 12, 2007, at Reel 3680, Frame 0274.

² Filed September 14, 2006, based on the allegation of a bona
fide intent to use the mark in commerce.

of goods and proper classification. "[S]mall hand-operated apparatus for mincing" was deemed to be improperly classified in International Class 21, and "small hand-operated apparatus for ... pressing" was deemed to be indefinite without further definition. Suggestions for appropriate corrective action were given and applicant was advised that any proposed amendment must be within the scope of the application as filed.

In response, applicant did not dispute the merits of the examining attorney's requirement,³ but responded in significant part as follows:

Please delete the present description of the goods and substitute in lieu thereof:

-Class 8: Small hand operated apparatus, namely a crank-powered torch radio and battery-powered LED booklight.-

The amendment is permitted pursuant to 37 C.F.R. § 2.71(a) because it clarifies and limits the hand operated apparatus. The hand operation of the LED booklight is turning it on to read and off to sleep. The hand operation of the torch radio is the cranking.

Response to Office Action, May 17, 2007.

On June 19, 2007, the Examining Attorney issued a final requirement for an acceptable identification of goods, finding that the "torch radio" and "battery-powered LED booklight" which were the subject of applicant's proffered

³ To be clear, we find the examining attorney's requirements with respect to the original identification of goods to be entirely proper.

amendment were entirely outside the scope of the application as filed, and that the original identification remained unacceptable. The Examining Attorney attached to his final action dictionary definitions of the words involved in the identification of goods and the proffered amendment.

Following final refusal, applicant requested reconsideration based on the same arguments now raised on appeal. The request was summarily denied.⁴

Applicant appealed. We affirm.

Applicable Law

"The applicant may amend the application to clarify or limit, but not to broaden, the identification of goods and/or services." Trademark Rule 2.71(a); 37 C.F.R. § 2.71(a). *In re M.V Et Associes*, 21 USPQ2d 1628 (Comm'r 1991); *see In re Swen Sonic Corp.*, 21 USPQ2d 1794 (TTAB 1991) (rule also applies to subsequent amendments). As is clear from its response to the first office action, applicant - and its counsel - are aware of Trademark Rule 2.71(a), and its applicability to this amendment.

⁴ Applicant's request for reconsideration indicates the likely reason for the amendment: Counsel noted that applicant sent a cease and desist letter to a third party who was allegedly selling "crank-powered torch radio[s]" and "battery-powered LED booklights" under the JOURNEY'S END mark. Counsel urged approval of the amendment because "to obtain legal redress, ... applicant requires the issuance of a registration of JOURNEY'S EDGE for the amended goods now being sought." Req. for Recon., July 12, 2007.

Discussion

Applicant urges that its amendment should be allowed, because its original identification of goods includes the words "small hand-operated apparatus," and the radio and LED booklight identified in its subsequent amendment are both "1. Hand operated; and 2. Apparatus."

This argument is entirely without merit, and relies on an obviously erroneous construction of its originally-filed identification of goods. The relevant wording in the original identification of goods is:

small hand-operated apparatus for mincing,
grinding and pressing...

Emphasis added.

This clause does not identify "small hand-operated apparatus" without limitation, as applicant would have us believe. Rather, the plain meaning of this language is that the term "apparatus" is limited to apparatus which may be reasonably used for "mincing, grinding and pressing."

It does not appear - and applicant does not argue - that a "crank-powered torch radio" or a "battery-powered LED booklight" can be used for "mincing, grinding [or] pressing." Because these goods cannot meet the limitation in the original identification of goods, their addition to this application would constitute a broadening, rather than

limiting or clarifying, amendment, and are therefore prohibited under Trademark Rule 2.71(a).⁵

Decision: The examining attorney's requirement for an acceptable identification of goods, including his refusal to approve applicant's amendment, is accordingly affirmed.

⁵ While applicant's argument on appeal and before the examining attorney focused on the "small hand-operated apparatus" language, we note that the newly added goods do not appear to fall within the scope of any of the other originally-identified goods.