

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: August 29, 2006

In re GMX, INC.

Serial No. 78596099

Filed: 03/28/2005

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On July 20, 2006, the Board acknowledged the notice of appeal in the above referenced application and allowed applicant sixty days to file its brief. It has since come to the attention of the Board that applicant had filed a request for reconsideration prior to the institution of the appeal. In view thereof, the Board's July 20, 2006 order is modified only to the extent that action on the appeal is suspended and the file is herewith remanded to the Trademark Examining Attorney for consideration of the request for reconsideration.

One basis of the final refusal was the unacceptability of the identification of goods, and the request contains a proposed amendment to the identification. If the amendment

is accepted and the mark is found registrable on the basis of this paper, the appeal will be moot. If the amendment is accepted but the refusal to register is maintained, the Examining Attorney should issue an Office Action so indicating, and return the file to the Board. The appeal will then be resumed and applicant allowed time in which to file its appeal brief. If the Examining Attorney determines that the amendment to the identification is not acceptable, the Examining Attorney should indicate in the Office Action the reasons why the proposed amendment is unacceptable, and return the file to the Board for resumption of proceedings in the appeal.¹ However, if the Examining Attorney believes that the problems with the proposed identification can be resolved, the Examining Attorney is encouraged to contact applicant, either by telephone or written Office Action, in an attempt to do so.

¹ If the Examining Attorney believes that the proposed amendment is unacceptable because it exceeds the scope of the original identification, or the identification as it has subsequently been amended, then the Examining Attorney may not issue a final refusal unless application was previously advised that amendments broadening the identification are prohibited under Trademark Rule 2.71(a).