Mailed: August 13, 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

Trademark Trial and Appeal Board

_____

In re Thor Tech

_____

Serial No. 78717682

_____

B. Joseph Schaeff of Dinsmore & Shohl LLP for Thor Tech LLP.

Allison Holz, Trademark Examining Attorney, Law Office 111 (Craig D. Taylor, Managing Attorney).[1]

_____

Before Grendel, Walsh, and Ritchie, Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Applicant filed an application seeking registration of MT RAINIER, in standard character form, for "recreational vehicles, namely, travel trailers," in International Class 12. A Notice of Allowance was mailed on April 3, 2007, requiring a Statement of Use, which applicant filed on October 3, 2007. Along with its Statement of Use, applicant filed an amendment, seeking to delete "MT" from the mark and register the mark as "RAINIER."

[1] This was the examining attorney assigned on appeal only.

The examining attorney refused the amendment as a "material alteration" of the mark in violation of 37 CFR §2.72. When the refusal was made final, applicant initiated this appeal. Both applicant and the examining attorney filed briefs, and applicant filed a reply brief.

Applicant is requesting an amendment of an intent-to-use application. Accordingly, the applicable rule is 37 CFR §2.72(b). The rule reads, in relevant part:

> In an application based on a bona fide intention to use a mark in commerce under section 1(b) of the Act, the applicant may amend the description or drawing of the mark only if: . . . .(2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed mark with the description or drawing of the mark filed with the original application.

The Court of Appeals for the Federal Circuit, our primary reviewing court, elaborated on how the Office would make the determination regarding whether a proposed amendment "materially alters a mark" (in a case quoting an earlier Board ruling):

> The modified mark must contain what is the essence of the original mark, and the new form must create the impression of being essentially the same mark. The general test of whether an alteration is material is whether the mark would have to be republished after the alteration in order to fairly present the mark for purposes of opposition. If one mark is sufficiently different from another mark as to require

> republication, it would be tantamount to a new mark appropriate for a new application. *In re Hacot-Colombier,* 105 F.3d 616, 620, 41 USPQ2d 1523, 1526 (Fed. Cir. 1997) (affirming refusal to add house mark in amendment), quoting *Visa Int'l Serv. Ass'n v. Life Code Sys., Inc.,* 220 USPQ 740, 743-44 (TTAB 1983).

We therefore look to whether applicant's proposed amendment contains "the essence of the original mark" or whether instead the amended mark is so altered that it would "have to be republished" in order to "fairly present" it for "purposes of opposition." Applicant here is attempting to delete matter from its mark. In a precedential Board ruling post-*Hacot-Colombier,* that applied the Court's language and reasoning, the Board noted, "we find that the deletion of matter from a mark should be evaluated according to the same standard as a proposed addition to the mark." *In re CTB Inc.*, 52 USPQ2d 1471, 1475 (TTAB 1999) (holding proposed amendment from TURBO, and design to typed word TURBO to be a material alteration). The Board went on to discuss the various cases that had been decided by the Board, as discussed by applicant here. Accordingly, we will not repeat that exercise. Rather, suffice to say, every case must be evaluated on its own facts according to the applicable law.

Applicant claims that the term to which it wishes to amend, "RAINIER," is recognized by the public as an

abbreviated form of its mark, MT RAINIER. In particular, applicant argues:

> The public recognizes the term "Rainier" as an abbreviated form of "Mt. Rainier." Dictionaries define "Rainier" as "Mt. Rainer," Encyclopedia articles use Mt. Rainier and Rainier interchangeably when referring to the mountain. Internet searches for the term "Rainier" alone list "Mt. Rainier" as the first and most relevant topic of such a search query. (appl's brief at 2)

Applicant submitted several dictionary definitions for "Rainier."[2] Some excerpts include the following:

> *Dictionary.com, Based on the Random House, Inc. (2006).*
> **Rainier**: **Mount**, a volcanic peak in W Washingon, in the Cascade Rainge. 14,408 ft. (4392 m)
>
> **Rainier**: **III** Rainier Louis Henri Maxence Bertrand de Grimaldi, Prince of Monaco, 1923-2005, reigning prince of Monaco 1949-2005.
>
> *American Heritage Dictionary (4th ed. 2006).*
> **Rainier**: A volcanic peak, 4395.1m (14,410 ft) high, of the Cascade Range in west-central Washington. It is the highest point in the range and the highest elevation in the state.
>
> **Rainier**: Characterized by, full of, or bringing rain.
>
> *U.S. Gazetteer, US Census Bureau*
> **Rainier, OR** (city, FIPS 60850) Location: 46.09233 N, 122.94643 W.
>
> **Rainier, WA** (town, FIPS 57220) Location: 46.89052 N, 122.68460 W.

[2] The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd* 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

> **Mount Rainier, MD** (city, FIPS 54275) Location: 38.94148 N, 76.96400 W.

We note that while several of the dictionary definitions list "Mount Rainier" as a possible definition of "Rainier," it is only one of several. The designation "Rainier" may also be, as the examining attorney points out, a name or a place, including one unaffiliated with the "Mt. Rainier" for which applicant was granted a notice of allowance. The Internet evidence that applicant submitted does not convince us otherwise. For example, in the wikipedia entry (which incidentially refers to "Mount Rainier" rather than the more specific "MT RAINIER" for which applicant was granted a notice of allowance), while it is true that the article sometimes refers to simply "Rainier" for short, it only does so when it has mentioned "Mount Rainier" earlier in the section to clarify for the reader which "Rainier" is being discussed.

In summary, it is clear that term "Rainier" is broader and potentially more inclusive than the mark MT RAINIER for which applicant was granted a Notice of Allowance. Accordingly, we have no doubt that the mark "would have to be republished after the alteration in order to fairly present the mark for purposes of opposition" in accordance with the test set up by our precedent. Accordingly, we

must affirm the denial of the amendment as a "material alteration" under 37 CFR §2.72.

Decision: The refusal to register is affirmed.