

TAP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD



GAP (APPAREL) INC.)
)
Opposer,)
)
v.)
)
NICOLAS B. HAUFF KRUGER)
)
Applicant.)
_____)

03-03-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #01

Opposition No. 125,806
Serial No. 76/304,143
Mark: FILLGAP & DESIGN

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REQUEST FOR AMENDMENT PURSUANT TO 37 C.F.R. §2.133(a)

In accordance with 37 C.F.R. §2.133 and TMBP § 514, Applicant, Nicolas B. Hauff Kruger, through his attorneys, hereby moves the Trademark Trial and Appeal Board to amend Application Serial No. 76/304,143.

Applicant filed U.S. Application No. 76/304,143 in International Classes 35 and 42 for the mark FILLGAP & DESIGN on August 23, 2001. Opposer initiated Opposition No. 125,806 with the United States Patent and Trademark Office to oppose the Application filed by Applicant.

The parties have agreed to settle the opposition, in part pursuant to Applicant's agreement to amend its application by amending the drawing of the mark, and by revising the description of services in Class 35.

Applicant requests that the Board amend the application to substitute the drawing page attached as Exhibit A herein for that contained in the application as filed.

Applicant submits that pursuant to TMEP § 807.14(a), the requested amendment does not constitute a material alteration of the mark. Inasmuch as TMEP § 807.14(a) provides that an applicant may amend a special form drawing to a typed drawing if the typed version conveys the

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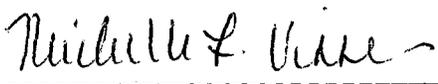
same commercial impression as the original mark, Applicant submits that the deletion of the black background outlining the "GAP" formative in the mark herein is similarly permissible, as it does not materially alter the commercial impression of the mark. The Board will note that the mark as shown in the drawing page attached as Exhibit A herein depicts the word portion of the mark in the identical font and stylization as the original drawing of the mark, and merely deletes the background outline in the mark and amends the capitalized "G" to a lower case "g." Therefore, this amendment will not materially alter the commercial impression of the mark. TMEP § 807.15.

Applicant requests that the Board amend the description of services in Class 35 from "*retail store services and on-line retail store services featuring computer hardware and software; licensing of computer software*" to "*licensing of computer software.*" The description of services in Class 42 should remain unchanged.

Thus, Applicant and Opposer respectfully request that the Board grant their Stipulated Motion to Amend Application No. 76/304,143, and amend the application to include the requested amendment to the mark and the description of services in Class 35.

Respectfully submitted,

Dated: 2/27/03



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Opposer, Gap (Apparel) Inc. hereby consents to this motion.

Dated:

2/24/03



Julie Gruber
GAP (APPAREL) INC.
GPS BAND SERVICES, INC.
2 Folsom Street, 13th Floor
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Attorneys for Opposer

CERTIFICATE OF MAILING

I hereby certify that the original of the foregoing *Request for Amendment pursuant to 37 C.F.R. §2.133(a)* is being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to BOX TTAB – NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on 2/27/03.

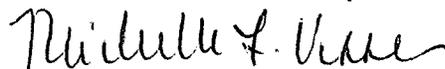


Michelle L. Visser

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing *Request for Amendment pursuant to 37 C.F.R. §2.133(a)* upon Opposer by causing a true and correct copy thereof to be sent on 2/27/03, by first class mail, postage prepaid to:

Julie Gruber, Esq.
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R0166848

EXHIBIT

A

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