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

Proceeding	91167151
Party	Defendant Independent Marketing Alliance LP Independent Marketing Alliance LP 16000 Memorial Drive, Suite 200 Houston, TX 77079
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Submission	Motion to Amend Application
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Date	10/20/2006
Attachments	PLD0.20061020.MOT to Amend Application.pdf (3 pages)(12337 bytes)

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

FLOWERS BAKERIES BRANDS, INC.,)	Opposition No. 91167151
Opposer)	
v.)	In the Matter of Application Serial No. 78/432642 Mark: COBBLESTONE MARKET
INDEPENDENT MARKETING ALLIANCE LP,)	
Applicant.)	Filing Date: December 6, 2005 Published: September 20, 2005

APPLICANT'S UNOPPOSED MOTION
FOR LEAVE TO AMEND APPLICATION

Now comes Applicant, Distribution Marketing Services, L.P., formerly Independent Marketing Alliance, L.P., and submits this Unopposed Motion for Leave to Amend Application pursuant to 37 C.F.R. §2.133. Applicant seeks to amend its Intent to Use Application ("Application") because Applicant believes it is entitled to registration of the mark, COBBLESTONE MARKET, as amended. Opposer has consented to the proposed amended application but otherwise reserves all rights.

The amendment of any application or registration which is the subject of an inter partes proceeding before the Trademark Trial and Appeal Board (the "Board") is governed by 37 C.F.R. §2.133. TBMP §514.01. 37 C.F.R. §2.133 permits an applicant to request that the identification of goods and services in its own application be restricted, if such a restriction would avoid likelihood of confusion. *Space Base Inc. v. Stadis Corp.*, 17 USPQ2d 1216 (TTAB 1990). The application will be amended as long as the amendment is supported by or is not inconsistent with evidence adduced at trial. *Id.*

A proposed amendment to any application or registration that is the subject of an inter partes proceeding must also comply with all other applicable rules and statutory provisions. TBMP §514.01. Section 2.71(a) of the Rules of Practice in Trademark Cases permits an applicant to amend its application to clarify or limit, but not broaden, the identification of goods and/or services. 37 C.F.R. §2.71(a). Again, Opposer has consented to the proposed amended application.

Applicant requests that the identification of goods in its Application be amended as follows:

- (a) “Deli meats; cooked deli items, namely, soups, ~~and vegetables~~; cheese; refrigerated salads except macaroni, rice, and pasta salad; pickles; bagged potato chips, frozen soups; frozen entrees, namely, entrees consisting primarily of meat, fish, poultry or vegetables, in Class 29”
- (b) “~~Deli mustard; cooked deli items, namely sandwiches, in Class 30~~”

By removing the stricken text above from the identification of goods, the proposed amendment to the Application limits the identification of goods and, therefore, is proper under 37 C.F.R. §2.71. The proposed amendment makes no attempt to broaden the identification of goods or services and the mark, as amended, is not likely to cause confusion with the mark for Opposer’s goods.

Applicant believes the Application, as amended, will narrow the issues in dispute before the Board thereby saving time and resources of the parties and the Board. Applicant therefore requests approval of the amendment by the Board. Should the Board find that additional amendment to the Application is necessary, Applicant

respectfully requests that the Board allow Applicant to amend its Application to conform to the findings of the Board.

Respectfully submitted,

/s/ Martyn B. Hill

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CERTIFICATE OF SERVICE

This is to certify that on this the 20th day of October, 2006, a copy of this Unopposed Motion for Leave to Amend Application was served via facsimile upon:

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/s/ Marty B. Hill

Martyn B. Hill