

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451**

DelGizzi

Mailed: July 11, 2006

Opposition No. 91167574

Gift Shops International,
Inc. and Donald L. Fisher

v.

Giftware International, Inc.

Elizabeth A. Dunn, Attorney:

On May 22, 2006, the parties filed a withdrawal of the opposition pursuant to the settlement agreement between the parties and on May 25, 2006, the Board dismissed the opposition without prejudice.

Now before the Board is applicant's proposed motion to amend its application Serial No. 76562531 pursuant to the settlement agreement between the parties, filed April 28, 2006 but not associated with the file when the Board issued its May 25, 2006 order. Because it issued on an incomplete record, the Board's May 25, 2006 order is vacated.

Because the proposed amendment was filed pursuant to a settlement agreement, the Board will construe the amendment as

including opposer's consent.¹ By proposed amendment, applicant seeks to add the following disclaimer:

**"No claim is made to the exclusive right to use
KID'S KORNER apart from the mark as shown."**

An amended application must still contain registrable matter, and the mark as amended must be registrable as a whole. The disclaimer must not materially alter the character of the mark. See Trademark Act Sec. 6; Trademark Rule §2.173(a). Inasmuch as the proposed addition of the disclaimer does not materially alter the character of the mark, and opposer consents thereto, it is approved and entered. See Trademark Rule 2.133(a).

The opposition is withdrawn pursuant to the settlement agreement between the parties.

¹ The parties are advised that it is better practice to plainly set forth the required consent to the proposed amendment.