

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

Am/csg

Mailed: November 21, 2008

Opposition No. 91168862

Opposition No. 91168968

Cabo Wabo LLC

v.

Bunte, Brady

Opposition No. 91168968

On November 19, 2008, applicant filed a proposed amendment to its application Serial No. 78551176, with opposer's consent.

By the proposed amendment applicant seeks to change the identification of goods as follows:

Class 29 **from** "nuts, namely, blanched, candied, seasoned and tequila flavored nuts; shelled, roasted or otherwise processed nuts; snack mix consisting primarily of processed fruits, processed nuts and/or raisins" **to** "nuts, namely, blanched, candied, and seasoned nuts; shelled, roasted or otherwise processed nuts; snack mix consisting primarily of processed fruits, processed nuts

and/or raisins; all of the foregoing excluding tequila-flavored products."

Class 30 **from** "chocolate covered nuts; snack mix consisting primarily of crackers, pretzels, candied nuts and/or popped popcorn " **to** "chocolate covered nuts; snack mix consisting primarily of crackers, pretzels, candied nuts and/or popped popcorn; all of the foregoing excluding tequila-flavored products."

Class 31 **from** "fresh nuts; raw nuts; and, unprocessed nuts " **to** "fresh nuts; raw nuts; and, unprocessed nuts; all of the foregoing excluding tequila-flavored products."

Inasmuch as the amendment is clearly limiting in nature as required by Trademark Rule 2.71(a), and because opposer consents thereto, it is approved and entered. See Trademark Rule 2.133(a).

If this resolves the dispute herein with respect to Opposition No. 91168968, opposer is allowed until thirty days from the mailing date of this order to file a withdrawal of the opposition, failing which Opposition no. 91168968 will go forward on the application as amended. See Trademark Rule 2.106(c).

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On November 19, 2008, applicant filed an abandonment of its application Serial No. 78468593 under Trademark Rule 2.68.

However, the applicable rule is Trademark Rule 2.135, which provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against the applicant.

Accordingly, because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant with respect to Opposition No. 91168862, the opposition is sustained and registration to applicant with respect to application Serial No. 78468593 is refused.

***By the Trademark Trial
and Appeal Board***

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on

the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>

http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>