

Goodman

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

Mailed: June 28, 2006

Opposition No. 91170274

Central Mfg. Inc. a/k/a
Central Mfg. Co.

v.

Target Brands, Inc.

Before Hairston, Grendel and Zervas, Administrative
Trademark Judges.

By the Board:

As background, the involved multi-class application was published on November 22, 2005 and opposer electronically filed its 90-day request to extend time to oppose on November 24, 2005. The Board approved the extension request on November 24, 2005, allowing opposer until March 22, 2006 to file its notice of opposition.¹ On February 9, 2006, applicant, by facsimile to the examining attorney, sought to amend its application to delete the Class 28 goods from its multi-class application, and the amendment was accepted and entered by the examining attorney on February 27, 2006. On March 21, 2006, opposer filed its notice of opposition and

¹ Opposer electronically filed a duplicate 90-day extension request on December 17, 2005 which was approved by the Board on December 19, 2005, also allowing opposer until March 22, 2006 to file the notice of opposition.

paid a fee opposing only the Class 28 goods in the subject application, and on April 10, 2006 proceedings were instituted.

This case now comes up on applicant's motion to dismiss, filed April 17, 2006. The motion is fully briefed.

In support of its motion, applicant argues that the opposition should be dismissed for failure to state a claim because the notice of opposition is directed only to goods in International Class 28, and prior to the institution of the opposition, applicant deleted the Class 28 goods from the subject multi-class application by filing an amendment after publication.

In response, opposer argues that applicant's after publication amendment was "void ab initio" because there is no evidence that the note to the file approving the deletion of the International Class 28 goods was issued under the authority of the Director or that the examining attorney had the permission of the Director to exercise jurisdiction under Trademark Rule 2.84 to issue the note to the file; that because the amendment was filed during an extension of time to oppose, the Board in its discretion may enter default judgment against applicant; and that denial of applicant's motion to dismiss and the granting of default judgment for opposer is appropriate.

In reply, applicant asserts that the examining attorney properly entered the amendment deleting the Class 28 goods pursuant to Trademark Rule 2.84(b) and TMEP Section 1505.01(a); and "that the filing of a request for extension of time to oppose does not commence an inter partes proceeding and does not deprive the examining attorney of the ability to act on a post-publication amendment"; and that because the notice of opposition is directed to the Class 28 goods which have been deleted, no relief can be granted to opposer and therefore, the opposition proceeding should be dismissed.

Opposer's opposition to applicant's motion is not well taken.

In the absence of an inter partes proceeding, the Board has jurisdiction only over matters relating to any requested extension(s) of time to oppose. Therefore, if, in an application which is the subject of a request for an extension of time to oppose, an amendment relating to the application is filed by the applicant, and the application is not involved in any Board inter partes proceeding, it is the examining attorney who must determine the propriety of the amendment or other paper. See Trademark Rule 2.84(b);

TBMP Section 212.01 (2d. ed. rev. 2004) and TMEP Section 1505.02(b).²

Accordingly, the examining attorney's consideration and approval of applicant's amendment to delete Class 28 goods during the extension period was proper, and the examining attorney was not required to obtain jurisdiction to enter the examiner's amendment. See Trademark Rule 2.84(b) and TMEP Section 1504.03.

Applicant's deletion of the Class 28 goods from the subject application renders the opposition, directed only to the Class 28 goods, a nullity.

In view thereof, applicant's motion is granted, and the opposition is dismissed.

² During an extension of time to oppose, applicant may request to amend its application to delete goods or services in the application, provided such amendment is otherwise proper and does not require the issuance of a refusal or requirement by the examining attorney. See TBMP Section 212.02 and TMEP Section 1505.01. The examining attorney can issue an examiner's amendment to approve the amendment deleting the goods or services in the application without the restoration of jurisdiction. TMEP Section 1504.03.