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

Baxley

Mailed: March 29, 2007

Opposition No. **91171891**

Kids Need Us Now, LLC

v.

Kashi Company

Andrew P. Baxley, Interlocutory Attorney:

On October 5, 2006, Kellogg North America Company ("Kellogg") filed a proposed amendment to the identification of goods of applicant's involved application Serial No. 78719203.[1] However, because Kellogg is not a party to this proceeding,[2] the proposed amendment is not properly before the Board and thus cannot be accepted and entered.

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[1] The proposed amendment was filed in the application file only. Inasmuch as the involved application is subject of this proceeding, the proposed amendment should also have been filed with the Board in the file for this proceeding for consideration herein. See Trademark Rules 2.133(a) and 2.193(a); TBMP Section 514 (2d ed. rev. 2004).

By the proposed amendment, Kellogg seeks to amend the identification of goods to add the wording "; excluding candy" at the conclusion thereof. The proposed amendment limits the identification of goods and thus complies with Trademark Rule 2.71(a). The proposed amendment, however, does not indicate that opposer consents thereto. See TBMP Section 514.03 (2d ed. rev. 2004).

[2] The involved application was filed by Kashi Company. No document reflecting the assignment of the involved application to Kellogg has been either recorded with the USPTO's Assignment Branch or filed with the Board in this proceeding. Accordingly, joinder of Kellogg as a party defendant herein is inappropriate at this juncture. See TBMP Section 512 (2d ed. rev. 2004).

On March 27, 2007, opposer filed a withdrawal of the opposition with prejudice. However, inasmuch as the withdrawal appears based on the acceptance and entry of the proposed amendment, consideration of that withdrawal is deferred.

Proceedings herein are suspended retroactive to October 5, 2006. Applicant is allowed until thirty days from the mailing date set forth in the caption of this order to file a proper amendment to the involved application,[3] failing which proceedings herein will be resumed and appropriate dates will be reset.

[3] If applicant files a consented motion to amend that is consistent with the foregoing, the Board will consider opposer's withdrawal of the opposition.