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

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Mailed: June 25, 2010

Opposition No. 91185393

Hewlett-Packard Development Company, L.P.

v.

Vudu, Inc.

Elizabeth A. Dunn, Attorney (571-272-4267):

This case comes up on applicant's consented motion, filed April 29, 2010, to amend its application Serial No. 77112745 to delete the goods in International Class 9, and to amend the services in International Classes 35, 41, and 42, with no change to the remaining International Class 38 services.

International Class 9

In an opposition to an application having multiple classes, if the applicant files a request to amend the application to delete an opposed class, the request for amendment is, in effect, an abandonment of the application with respect to that class, and, absent the written consent

of opposer, requires entry of judgment for opposer as to that class of goods. Trademark Rule 2.135.

Here, the Board entered judgment for opposer as to the International Class 9 goods in its October 26, 2009 order granting in part opposer's motion for summary judgment on the issue of likelihood of confusion. Because the Board will not enter a "second" judgment in favor of opposer as to the International Class 9 goods, we will construe the filing as an agreement by applicant to accept the judgment already entered against it in regard to that class.

International Classes 35 and 41

With respect to International Classes 35 and 41, the consented amendment seeks to add the wording emphasized below:

International Class 35

Providing consumer information used in the selection and purchase of audio and video content, namely, retail ordering services in the field of motion pictures and multi-media excluding interactive games.

International Class 41

Providing information in the area of audio and video programming, namely, electronic distribution of motion pictures and multi-media to retail consumers excluding interactive games.

Inasmuch as the amendments to the services in International Classes 35 and 41 are clearly limiting in nature as required by Trademark Rule 2.71(a), and because opposer

consents thereto, the amendment are subject to approval under Trademark Rule 2.133(a).

International Class 42

With respect to International Class 42, the consented amendment seeks to change the wording emphasized below:

from

> Providing a website featuring temporary use of non-downloadable software allowing website users to store and playback audio and video content for entertainment purposes

to

> Providing a website featuring temporary use of non-downloadable software allowing website users to store and playback audio and video content in the field of motion pictures and multi-media excluding interactive games

As shown, the published recitation of services was restricted to "entertainment purposes." Because the proposed amendment, notwithstanding the addition of a field of use (motion pictures and multi-media excluding interactive games), eliminates that restriction, the proposed amendment impermissibly exceeds the scope of the original recitation of services. See Trademark Rule 2.71(a).[1] Specifically, the proposed amendment expands the

[1] As an example, an acceptable amendment would read: Providing a website featuring temporary use of non-downloadable software allowing website users to store and playback audio and video content for entertainment purposes in the field of motion pictures and multi-media excluding interactive games

services to encompass those used for other purposes, i.e. commercial or educational purposes. *IdeasOne, Inc. v. Nationwide Better Health, Inc.*, 89 USPQ2d 1952, 1954-55 (TTAB 2009). Accordingly, the proposed amendment is denied with respect to International Class 42.

Applicant is allowed until thirty days to submit an acceptable consented amendment to its International Class 42 services, and the amendments to all three classes will be entered, or to indicate that it wishes the consented amendments to International Classes 35 and 41 only to be entered. In the absence of either response, no amendments will be entered, and proceedings herein will resume on the schedule approved by the Board in its March 11, 2010 order.

Proceedings otherwise remain suspended.

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