

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

RR

Mailed: March 31, 2009

Opposition No. 91189089

**Hershey Chocolate &
Confectionery Corporation,
The Hershey Company**

v.

Ever Companion Food Corp.

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

On March 11, 2009, applicant filed a proposed amendment to its application Serial No. 77194584, with opposer's written consent.¹

By the proposed amendment, applicant seeks to change the identification of goods in International Class 30,

From: "Tea; beverages made of tea; coffee; coffee based beverages containing milk; ice cream; salt; soy sauce; cooking or flavoring sauce; black and dark vinegar; vinegar; seasonings, spices and flavorings for food; sugar; natural sweeteners; honey; royal jelly for food

¹ The Board notes that applicant failed to provide proof of service of the consented amendment upon opposer's counsel as required by Trademark Rule 2.119, 37 C.F.R. 2.119. However, inasmuch as the motion rawal was executed by opposer's counsel in accordance with settlement of this matter, and to expedite matters, a copy of applicant's submission will be forwarded to opposer's counsel along with this order. **Strict compliance with the Trademark Rules is expected in future submissions to the Board.**

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purposes; molasses and maple syrups; chewing gum; candy mints, non-medicated lozenges and candy; rice crackers; snack mixes consisting of crackers, pretzels, candied nuts and/or popped popcorn; biscuits; cakes; breads; sandwiches; puddings; pies; dumplings; buns; spring rolls; egg rolls, egg dumplings; rice; processed wheat; rolled oats; flour; processed grains; pearl-like balls consisting of food starches made from cassava, tapioca, taro and/or sweet potatoes; sago, tapioca, pearl tapioca; glutinous rice; packaged meals consisting of rice; instant noodles; packaged meals consisting of noodles or pastas; dumplings; noodles; rice noodles; spring roll skins and wrappers; dough; yeasts; thickening agents for cooking or making foodstuff; flavored vinegar,"

To the following(see changes in bold below):

"Tea; beverages made of tea; coffee; coffee based beverages containing milk; ice cream; salt; soy sauce; cooking or flavoring sauce; black and dark vinegar; vinegar; seasonings, spices and flavorings for food; sugar; natural sweeteners; honey; royal jelly for food purposes; molasses and maple syrups; chewing gum; candy mints, non-medicated lozenges and candy; rice crackers; snack mixes consisting of crackers, pretzels, candied nuts and/or popped popcorn; biscuits; cakes; breads; sandwiches; puddings; pies; dumplings; buns; spring rolls; egg rolls, egg dumplings; rice; processed wheat; rolled oats; flour; processed grains; pearl-like balls consisting of food starches made from cassava, tapioca, taro and/or sweet potatoes; sago, tapioca, pearl tapioca; glutinous rice; packaged meals consisting of rice; instant noodles; packaged meals consisting of noodles or pastas; dumplings; noodles; rice noodles; spring roll skins and wrappers; dough; yeasts; thickening agents for cooking or making foodstuff; flavored vinegar, **all of the foregoing excluding chocolate candies, goods containing chocolate or cocoa, and goods categorized by chocolate or cocoa flavor.**"

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).

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If this resolves the dispute herein, opposer is allowed until **thirty days** from the mailing date of this order to file a withdrawal of the opposition, failing which the opposition will go forward on the application as amended. See Trademark Rule 2.106(c).

Proceedings are otherwise **SUSPENDED**.



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>