

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

vw

Mailed: December 10, 2010

Opposition No. 91195205

Apple, Inc.

v.

thinkorswim Holdings Inc.

**Yong Oh (Richard) Kim, Interlocutory Attorney:**

On November 12, 2010, applicant filed a proposed amendment to its application Serial No. 77380708, without opposer's consent.

By the proposed amendment, applicant seeks to change the identification of goods and services (in International Classes 36 and 38) for Serial No. 77380708 by adding the following limitation to each description, i.e., *"none of the aforesaid goods/services relating to portable media players"*:

**From:** *"Securities account trading services for others made available online via a web-based software platform"* in International Class 36; and

*"Provision of access to electronic sites, namely, to a securities account trading services site made available online via a web-based software platform"* in International Class 38.

**To:** *"Securities account trading services for others made available online via a web-based software platform; none of the*

*aforesaid goods/services relating to portable media players" in International Class 36; and*

*"Provision of access to electronic sites, namely, to a securities account trading services site made available online via a web-based software platform; none of the aforesaid goods/services relating to portable media players" in International Class 38.*

Where an unconsented motion to amend an application that is involved in an *inter partes* proceeding is filed before trial, the Board generally will defer determination until final decision. See TBMP § 514.03. On the other hand, if a proposed amendment is clearly limiting in nature as required by Trademark Rule 2.71(a), and is consented to by opposer, it will typically be approved and entered. See Trademark Rule 2.133(a).

Inasmuch as applicant's proposed amendment is otherwise in compliance with Trademark Rule 2.71(a), proceedings herein are **SUSPENDED** to allow applicant until **THIRTY DAYS** from the date of this order to notify the Board in writing, if accurate, that opposer consents to the proposed amendment.

The Board further notes that an answer was due in this matter on November 14, 2010. To date, however, no answer has been received. Inasmuch as it appears that no answer has been filed, nor has applicant filed another motion to extend its time to answer, **NOTICE OF DEFAULT** is hereby entered against applicant under Fed. R. Civ. P. 55(a).

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Applicant is allowed the same **THIRTY DAYS** as noted above to show cause why judgment by default should not be entered against applicant in accordance with Fed. R. Civ. P. 55(b).

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