

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

Baxley

Mailed: March 30, 2011

Opposition No. 91198021

Arminex International, Inc.

v.

American International  
Industries

**Andrew P. Baxley, Interlocutory Attorney:**

On March 4, 2011, applicant filed a motion to amend the identification of applicant in involved application Serial No. 85080615. On March 8, 2011, applicant filed its answer and counterclaim to cancel opposer's pleaded Registration No. 3929986.

The motion does not include proof of service upon opposer, as required by Trademark Rule 2.119(a).<sup>1</sup> Although the motion does not state that opposer consents thereto, the Board, in its discretion, elects to consider the motion at this time. See TBMP Section 514.03 (2d ed. rev. 2004).

By the motion, applicant seeks to amend its entity designation from "a California corporation" to "a General Partnership made up of Glamour Industries Co., a California

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<sup>1</sup> The Board will not consider any further submissions by applicant that do not include proof of service in compliance with Trademark Rules 2.119(a) and (b).

corporation; ARYZ Corp., a California corporation; ERX Corp., a California corporation; and RAZY Properties, Inc., a California corporation." Applicant claims that its identification as a corporation was a clerical error; that no such corporation existed on the July 8, 2010 application filing date; and that no such corporation exists today.

If the party applying to register the mark is, in fact, the owner of the mark, but there is a mistake in the manner in which the name of the applicant is set out in the application, the mistake may be corrected by amendment.

*U.S. Pioneer Electronics Corp. v. Evans Marketing, Inc.*, 183 USPQ 613 (Comm'r Pats. 1974); TMEP Section 1201.02(c)(7) (7<sup>th</sup> ed. 2010). If the party listed as the applicant did not exist on the application filing date, the application may be amended to correct the applicant's name. See *Accu Personnel Inc. v. Accustaff Inc.*, 38 USPQ2d 1443 (TTAB 1996).

However, the application may not be amended to designate another entity as the applicant. Trademark Rule 2.71(d); TMEP Sections 803.06 and 1201.02(c)(7). An application filed in the name of the wrong party is void and cannot be corrected by amendment. *Huang v. Tzu Wei Chen Food Co. Ltd.*, 849 F.2d 1458, 7 USPQ2d 1335 (Fed. Cir. 1988); *Great Seats, Ltd. v. Great Seats, Inc.*, 84 USPQ2d 1235 (TTAB 2007).

Applicant's motion is not supported by evidence, such as a printout of a business search of the online records of the Secretary of State of the State of California or a declaration of a person who conducted such a search. On March 25, 2011, the Board attorney assigned to this case conducted a business search of the online records of the Secretary of State of the State of California at <http://kepler.sos.ca.gov/cbs.aspx>. That search revealed that there is indeed a California corporation named "American International Industries, Inc." based in Camarillo, California.<sup>2</sup> Such corporation has a September 30, 1998 filing date and is currently "suspended." Thus, it appears that there is a California corporation named American International Industries that existed on the filing date of the involved application and that applicant, by its proposed amendment, may be improperly attempting to designate another entity as applicant. In view thereof, the motion to amend the involved application is denied without prejudice.

Further, the motion states that the partnership is the "true and correct owner of the" involved application, but the corporation remains the applicant of record. Based on

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<sup>2</sup> Said corporation's entity number is C2122540. Its full address is 1040 Avenida Acaso, Camarillo, CA 93012, and its agent for service of process is David Eisenstein, 344 Valley Vista Drive, Camarillo, CA 93010.

the foregoing, applicant is allowed until thirty days from the mailing date set forth in this order show cause to explain the discrepancy between the statement in its motion and the records of the Secretary of State of the State of California.<sup>3</sup>

Proceedings herein, including institution of the counterclaim, are otherwise suspended pending resolution of the foregoing.

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<sup>3</sup> The involved application may be void if the corporation applicant is not the owner of the application. A void application cannot be cured by amendment or assignment. The true owner may file another application (with a new filing fee) in its name or, if the applicant who is refused later becomes the owner of the mark, he or she may file another application (with a new filing fee) at that time. TMEP Section 803.06.