

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

EJW/vw

Mailed: January 3, 2014

Opposition No. 91205786

Diageo North America, Inc.

v.

Martin Anton Groder

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

On October 17, 2013, applicant filed a proposed amendment to its involved application Serial No. 79089902 with the consent of opposer in this proceeding and of the opposer in Opposition No. 91205787. By the proposed amendment, applicant seeks to (1) amend the identification of goods in International Class 32, and (2) delete International Class 33 in its entirety.

- **AMENDMENT OF IDENTIFICATION OF INTERNATIONAL CLASS 32**

Applicant seeks to delete the wording "beers" so the resulting identification will read as follows:

"Mineral and aerated waters and other non-alcoholic drinks, namely, soft drinks and carbonated energy drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages, namely, soft drinks and carbonated energy drinks."

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).

- **CLASS 33 DELETION**

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 is governed by Trademark Rule 2.135. TBMP § 602.01 (3d ed. rev. 2 2013). Trademark Rule 2.135 provides that if, in an *inter partes* proceeding, the applicant files an abandonment without the **written consent** of every adverse party to the proceeding, judgment shall be entered against applicant. In addition, application Serial No. 79089902 is also involved in Opposition No. 91205787 brought by a third party. Accordingly, the proposed deletion of the goods in International Class 33 in its entirety cannot be entered without the written consent of both opposers. See TBMP 514.02.

In view thereof, applicant is allowed until **THIRTY DAYS** from the mailing date of this order to submit both opposers **written consent** to the abandonment of the goods in International Class 33, failing which judgment will be entered against applicant with respect to International Class 33.

The proceeding is otherwise **SUSPENDED** pending a response from applicant and is deemed to have been suspended since the filing date of the subject motion to amend.

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