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Filing date: **07/10/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91209557
Party	Defendant ABC Home Furnishings, Inc.
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Date	07/10/2013
Attachments	Second Amendment to '796.pdf(863215 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of

U.S. Trademark Application 85/384,796

For the mark ABC KITCHEN

Published in the Official Gazette on September 11, 2012

_____	:	
Horizon U.A.E. FZCO,	:	
	:	
Opposer,	:	
	:	
-against-	:	Opposition No. 91209557
	:	
ABC Home Furnishings, Inc.,	:	
	:	
Applicant.	:	
_____	:	

SECOND AMENDMENT OF APPLICATION

Pursuant to 37 C.F.R. §2.133, the terms of the June 11, 2013 Settlement Agreement by and between the Applicant ABC Home Furnishings, Inc. (“Applicant”) and Opposer Horizon U.A.E. FZCO (“Opposer”) resolving the above-captioned Opposition Proceeding 91209557 and further to the Order mailed on July 5, 2013 by the Trademark Trial and Appeal Board (the “Board”) in this action, Applicant respectfully requests, with Opposer’s consent, that its Application Serial Number 85/384,796 for the mark ABC KITCHEN be further amended as follows:

That the recitation of services in International Class 35 of Application Serial No. 85/384,796 be amended to delete the phrase “and specifically excluding soy sauce and chili sauce” presently appearing between the words “mole” and “relishes” and insert that phrase after

the word “wine” at the end of the recitation of services instead.

The prior amendment submitted by Applicant (and granted by the Board) to add the language “and specifically excluding soy sauce and chili sauce” after the word “mole” was intended by the parties to refer to the sauces and condiments listed in the recitation of services. However, upon review of the amendment, the exclusion language in International Class 35 may be erroneously construed to also refer to the goods following the exclusionary language, namely “relishes, seasonings, baked goods, namely, brownies, bars, cakes, breads, pizza crusts, granola, granola bars, and wine”. It was not the intention of the parties for the amendment to exclude from the recitation of the retail store services covered by the Application such goods, only those retail store services that feature soy sauce and chili sauce. To correct any inadvertence and prevent any misinterpretation of the exclusionary language in the recitation of services, Applicant respectfully submits that removing the exclusionary language and moving it to the end of the recitation of services will properly reflect the intended scope of the exclusion as agreed to by the parties.

If the Board grants the requested amendment, the recitation of services in International Class 35 will read as follows, wherein language added is underlined and language removed is struck:

International Class 035 – “retail store services featuring cooking and salad oils, fruit spreads, jellies, jams, marmalades, olive oil, sauces, condiments, namely, hot sauce, oyster sauce, seafood sauce, cocktail sauce, kimchee, nuoc cham, mustard, ketchup, vinegar, mayonnaise, salad dressing, chutney, aioli, spices, dry rubs, salts, capers, teriyaki, wasabi, tomato paste, tomato sauce, pesto, tapenade, marinade, hoisin sauce, black bean sauce, ginger dipping sauce, ponzu sauce, masala, salsa, vinaigrette, chocolate sauce, tzatziki, bbq sauce, horseradish, bean paste, curry sauce, fish sauce, umeboshi paste, plum sauce, tamari, mint sauce, mole, ~~and specifically excluding soy sauce and chili sauce~~, relishes, seasonings, baked goods, namely, brownies, bars, cakes, breads, pizza crusts, granola, granola bars, and wine and specifically excluding soy sauce and chili sauce.”

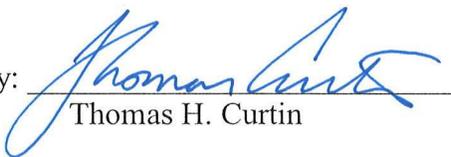
As moving the exclusionary language to the end of the recitation of services of the subject application serves to clarify the scope of the prior amendment to exclude soy sauce and chili sauce only (and not relishes, seasonings, baked goods, namely, brownies, bars, cakes, breads, pizza crusts, granola, granola bars, and wine) and is made with the Opposer's consent, Applicant respectfully submits that the proposed Second Amendment is proper and should be granted by the Board. 37 C.F.R. §§ 2.74, 2.133.

WHEREFORE, Applicant respectfully requests that its Application No. 85/384,796 for the mark ABC KITCHEN be further amended as set forth above.

Dated: New York, New York
July 10, 2013

Respectfully submitted,

LATHROP & GAGE LLP

By: 
Thomas H. Curtin

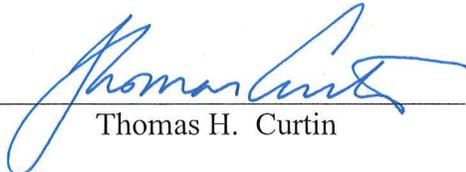
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Second Amendment to Application was served this 10th day of July, 2013 via Federal Express overnight delivery service, upon the attorneys for Opposer at the following address:

Timothy Fraelich, Esq.
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Thomas H. Curtin