

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Am

Mailed: November 20, 2014

Opposition No. 91214345

Fox Head, Inc.

v.

Trevor Dunbar Sr. dba Shift Team

Elizabeth A. Dunn, Attorney:

On September 23, 2014, applicant filed a proposed amendment, with opposer's consent, to its application Serial No. 85902199.

By the proposed amendment applicant seeks to amend the classification of "Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms" from International Class 25 to International Class 28.

Pursuant to Trademark Manual of Examining Procedure § 1401 (October 2014) ("TMEP"), international trademark classification, and the headings of the international trademark classes, are established by the Committee of Experts of the Nice Union and set forth in the *International Classification of Goods and Services for the Purposes of the Registration of Marks* (Nice Classification) published annually by the World Intellectual Property Organization ("WIPO") on its website. The international trademark

classification was adopted by the United States as its system of classification as of September 1, 1973. *See* 911 TMOG 210 (June 26, 1973).

In 2013, the Committee of Experts began annual revisions to the Nice Classification. The annual revisions include “the addition of new goods and services to, and deletion of goods and services from, the Alphabetical List, and any modifications to the wording in the Alphabetical List, the class headings and the explanatory notes that do not involve the transfer of goods or services from one class to another.” TMEP § 1401. With respect to Int. Class 28, the explanatory notes state (emphasis added):

CLASS 28

(Toys and sporting goods)

Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

Explanatory Note

This Class includes, in particular:

amusement and game apparatus adapted for use with an external display screen or monitor;
fishing tackle;
equipment for various sports and games.

This Class does not include, in particular:

Christmas tree candles (Cl. 4);
diving equipment (Cl. 9);
electrical lamps (garlands) for Christmas trees (Cl. 11);
fishing nets (Cl. 22);
clothing for gymnastics and sports (Cl. 25);
confectionery and chocolate decorations for Christmas trees (Cl. 30).

Because the Nice Agreement, to which the US is a signatory, specifies that clothing for sports is classified in Int. Cl. 25 and not Int. Cl. 28, the proposed amendment is unacceptable, and is DENIED.

Opposer's consented motion to suspend proceedings pending settlement negotiations, filed September 23, 2014 is granted and trial dates are reset as indicated in opposer's motion.