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

Proceeding	91217006
Party	Plaintiff Kind LLC
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Date	07/01/2014
Attachments	Opposition No. 91217006 - Motion to Amend Registrations.pdf(40195 bytes ) Opposition No. 91217006 - Memo of Law in Support of Motion to Amend Registrations.pdf(116906 bytes )

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

KIND LLC,

Opposer,

v.

HERBERT D. FLORES DBA  
ZONAFELIZ,

Applicant.

Opposition No. 91217006

**MOTION TO AMEND REGISTRATIONS**

Opposer, Kind LLC (“Kind”), hereby moves, pursuant to Trademark Rule 2.107 and Section 7 of the U.S. Trademark Act, to amend U.S. Trademark Registration Nos. 2984772, 3882221, 3971639 and 4097493 to correct the dates of first use and first use in commerce printed on the certificates of registration from February 18, 2003 to at least as early as June 14, 2004, and to amend U.S. Trademark Registration No. 4161495 to correct the dates of first use and first use in commerce for the Class 29 goods printed on the certificate of registration from February 18, 2003 to at least as early as June 14, 2004. As set forth in the brief submitted herewith, it is respectfully requested that the Trademark Trial and Appeal Board grant Kind’s Motion to Amend Registrations.

For the information of the Board, Kind is also filing motions seeking the identical relief in Opposition Nos. 91211463, 91213362, 91214163, 91216941 and 91212055.

Dated: July 1, 2014

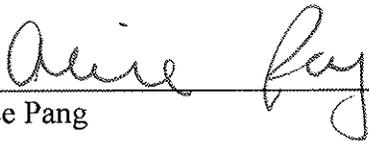
Respectfully submitted,

/s/ Margarita Wallach  
Margarita Wallach  
Attorney for Kind LLC  
McCarter & English LLP  
245 Park Ave., 27<sup>th</sup> Floor  
New York, NY 10167  
Tel: (212) 609-6819  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Amend Registrations was served on this 1st day of July, 2014 via first class mail, postage prepaid on Applicant at:

Herbert D. Flores  
PO Box 818  
Moss Beach, CA 94038-0818

  
\_\_\_\_\_  
Alice Pang

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HERBERT D. FLORES DBA  
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**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO AMEND REGISTRATIONS**

Pursuant to Trademark Rule 2.107 and Section 7 of the U.S. Trademark Act, Opposer Kind LLC (“Kind”) seeks to amend U.S. Trademark Registration Nos. 2984772, 3882221, 3971639, 4097493, and 4161495 to correct the dates of first use printed on the certificates of registration. Pursuant to 37 C.F.R. § 2.133(a), Kind is also filing motions seeking the identical relief in Opposition Nos. 91211463, 91213362, 91214163, 91216941 and 91212055.

**BACKGROUND**

Kind is the registered owner of numerous United States trademark registrations for the mark KIND, as well as trade dress registrations for Kind’s product packaging. Kind’s registrations include U.S. Registration Nos. 2984772, 3882221, 3971639, 4097493 and 4161495 (collectively, the “Kind Registrations”). The Kind Registrations cover goods in Class 29 and/or Class 30, among others. All of the Kind Registrations are valid and subsisting. U.S. Registration No. 2984772 is incontestable.

At the time that each of the applications for the Kind Registrations was filed, Kind had a good faith belief that February 18, 2003 was the date that Kind first used the marks that were the subject of these applications in connection with all of the goods identified in Class 29 (U.S. Registration Nos. 3882221, 3971639, 4097493 and 4161495) and Class 30 (U.S. Registration No. 2984772) anywhere and in U.S. commerce.

However, through Kind's recent review of its corporate records, Kind has reached the conclusion that the first use dates should not have been identified as February 18, 2003. Instead, Kind has used the marks that are the subject of U.S. Registration Nos. 2984772, 3882221, 3971639 and 4097493 in connection with the goods identified therein, anywhere and in U.S. commerce, since at least as early as June 14, 2004. Likewise, Kind has used the mark that is the subject of U.S. Registration No. 4161495 in connection with the Class 29 goods identified therein, anywhere and in U.S. commerce, since at least as early as June 14, 2004.

## ARGUMENT

Pursuant to section 7(h) of the Trademark Act, if a mistake in a trademark registration is made in good faith, the owner may apply for an amendment of its registration, so long as the amendment does not result in republication or a material alteration of the marks at issue. *See* 15 U.S.C. § 1057(h); *see also* TMEP § 1609.10(b). Kind seeks merely to correct the first use dates printed on the certificates of registration for the Kind Registrations. Accordingly, the relief Kind seeks does not require republication of the marks and trade dress at issue. *See* 15 U.S.C. §1057(h); *see also* TMEP § 1609.10(b). Nor does it cause a material alteration of the marks. *See* TMEP § 1609.10(b).

Furthermore, Kind's request to change the dates of use should be accepted by the Board even though the corrected dates are later than the dates originally set forth in the Kind Registrations because the modified dates would have been accepted during examination of the application. *See* TMEP § 1609.07; *see also In re Pamex Foods, Inc.*, 209 USPQ 275 (Comm'r Pats. 1980); *Grand Bag & Paper Co. v. Tidy-House Paper Products, Inc.*, 109 USPQ 395 (Comm'r Pats. 1956). For applications based on use in commerce under 15 U.S.C. § 1051(a), like the applications that issued as the Kind Registrations, the registration cannot be corrected to specify a date of use that is later than the application filing date. 37 C.F.R. § 2.71(c)(1)). Here, Kind seeks to amend its dates of use for the Kind Registrations to at least as early as June 14, 2004, which is a date that is earlier than the filing dates of the applications that were the basis for Registration Nos. 4161495, 3882221, 3971639, 4097493 and to a date that is at least as early as the filing date for the application that was the basis for Registration No. 2984772.

At the time Kind filed the applications for the Kind Registrations, it had a good faith belief that it began using its KIND-formative marks and trade dress in connection with the goods identified in Registration Nos. 2984772, 3882221, 3971639 and 4097493 and the Class 29 goods identified in Registration No. 4161495 since at least as early as February 18, 2003. However, Kind recently discovered through a review of its corporate records that Kind's first use dates for the Kind Registrations were inaccurately recorded. Kind has used its KIND-formative marks and trade dress in Class 29 (U.S. Registration Nos. 3882221, 3971639, 4097493 and 4161495) and Class 30 (U.S. Registration No. 2984772) since at least as early as June 14, 2004. Accordingly, Kind requests that the Board grant its request to correct the registration dates printed on the certificates of registration for the Kind Registrations to reflect this change.

## CONCLUSION

For the foregoing reasons, KIND respectfully requests that the Trademark Trial and Appeal Board grant this Motion to Amend Registrations and correct the dates of first use printed on the certificates of registration for Registration Nos. 2984772, 3882221, 3971639 and 4097493 from February 18, 2003 to at least as early as June 14, 2004 and correct the dates of first use printed on the certificate of registration for Registration No. 4161495 for the Class 29 goods from February 18, 2003 to at least as early as June 14, 2004.

Dated: July 1, 2014

Respectfully submitted,

/s/ Margarita Wallach  
Margarita Wallach  
Attorney for Kind LLC  
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245 Park Ave., 27<sup>th</sup> Floor  
New York, NY 10167  
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