

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Baxley

Mailed: September 6, 2002

Opposition No. 124,085

Block Drug Company, Inc.

v.

Om-Chi Herb Co.

Andrew P. Baxley, Interlocutory Attorney:

On July 11, 2002, applicant filed a proposed amendment to its involved application Serial No. 75/940,304, pursuant to a settlement agreement between the parties.¹ The Board will treat the proposed amendment as a motion to amend the involved application with opposer's consent. See Trademark Rule 2.133(a).

By the proposed amendment applicant seeks to add the the following to the identification of goods: "Such goods shall be limited to sale and distribution in the following markets: health food stores, health care practitioners, herbal

¹ Applicant's notation in the proposed amendment that a copy thereof was sent to opposer's counsel is not acceptable proof of service. Rather, applicant must include a statement signed by its attorney or other authorized representative, attached to or appearing on the original paper when filed, clearly stating the date and manner in which service was made. See Trademark Rule 2.119(a).

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conferences and herbal shops include online herbal outlets and through Applicant's web site."

The amendment is clearly limiting in nature as required by Trademark Rule 2.71(a). Nonetheless, it is noted that, inasmuch as the amendment will be appearing on a registration, applicant should be referred to as "registrant" therein. Moreover, identifications of goods are generally not drafted in sentence form.

On September 6, 2002, the Board held a telephone conference between Leigh Ann Lindquist, counsel for opposer, and Maria Trost, counsel for applicant.

During such conference, the parties agreed to adopt the following amendment to the identification of goods for the involved application: "cognition enhancing nutritional supplements for sale and distribution only in health food stores and herbal shops, via online herbal outlets, including registrant's website, by health practitioners, and at herbal conferences." The proposed amendment is approved and is hereby entered.

If the amended identification of goods resolves the dispute herein, opposer is allowed until **thirty days** from the mailing date of this order to file a withdrawal of the opposition, failing which the opposition will go forward based on the application as amended. See Trademark Rule 2.106(c).