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01-23-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #30

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

In re U.S. Trademark Applications

Serial Nos. 76/211,024 and 76/211,022
and
Opposition No. 91153460

Doumak, Inc., Opposer)
)
v.)
)
Consolidated Biscuit Co., Applicant.)

Opposition No. 91153460

January 23, 2003

MOTION TO AMEND APPLICATION UNDER 37 C.F.R. 2.133(a)
WITH CONSENT

Consolidated Biscuit Co., hereby requests amendment to the identification of goods in Class 30 in the two applications identified above, that are the subject of Opposition No. 91153460.

The goods in class 30 are currently described as: C A N D Y A N D
CONFECTIONS, EXCLUDING MARSHMALLOWS AND MARSHMALLOW
CONFECTIONS, NAMELY, CHOCOLATE, CHOCOLATE CHIPS, BUTTERSCOTCH

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TRADEMARK TRIAL AND APPEAL BOARD

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CHIPS, HARD CANDIES, CANDIES CONTAINING JELLY, LICORICE AND CHOCOLATE COVERED NUTS, ALL FOR SNACKING AND EATING.

The goods in class 30 should be amended to: C H O C O L A T E , CHOCOLATE CHIPS, BUTTERSCOTCH CHIPS, HARD CANDIES, PEANUT BRITTLE, CANDIES CONTAINING JELLY, LICORICE AND CHOCOLATE COVERED NUTS, ALL FOR SNACKING AND EATING.

The changes to the identification of goods consist of the removal of the prefatory language "Candy and confections, excluding marshmallows and marshmallow confections" and the addition of the terminology "peanut brittle".

The addition of the terminology "peanut brittle" does not broaden the identification of goods. The existing identification of goods already includes "hard candies" as well as "candies containing chocolate covered nuts". Peanut brittle is a hard candy that contains nuts. Therefore, peanut brittle is logically included within the scope of the terms originally identified.

As indicated in TMEP 1402.06(a),

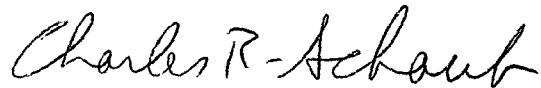
If an applicant wishes to amend the identification of goods and services to insert an item that is equivalent to or logically encompassed by an item already included in the identification of goods and services, the examining attorney should permit the amendment, if it is timely and otherwise proper.

Consolidated Biscuit and Doumak have agreed to settle this opposition and the Opposer, Doumak, has expressly consented to the amended identification of goods in Class 30, as set forth above. Upon the filing of the amendment herein to the identification of goods, Doumak will withdraw its Notices of Opposition to registration of Consolidated Biscuit's trademark applications.

Favorable action is solicited.

Respectfully submitted,

CONSOLIDATED BISCUIT CO.



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CERTIFICATE OF SERVICE

This is to certify that a copy of this **MOTION TO AMEND APPLICATION UNDER 37 C.F.R. 2.133(a) WITH CONSENT** was sent by regular U.S. mail to Stacy Y. Dixon, Esq., attorney for Opposer, at the address of Lord, Bissell & Brook, 115 South LaSalle Street, Suite 3500, Chicago, Illinois, 60603, this 23rd day of January, 2003.



Charles R. Schaub

CRS:RD