

BRIEF

The Trademark Rules permit amendment of an application that is the subject of proceedings before the Trademark Trial and Appeal Board, with the Board's approval. 37 C.F.R. § 2.133(a). This is true even if the amendment addresses matters that may require republication of the mark. *See* § 514.01 TBMP (“[A]n otherwise appropriate amendment to an application will ordinarily not be rejected by the Board solely on the basis that the amendment would require republication of the mark.”)

An amendment to correct dates of first use is specifically authorized in Section 1505.01(d) TMEP:

If, in an application under §1(a), the applicant proposes to amend the dates of use to adopt a date of use that is later than the date originally stated, but before the filing date, the Office will approve the amendment and will republish the mark to provide notice to parties who may have commenced use of a similar mark during the intervening period.

The application in this case was filed under Section 1(a), and the dates of use specified by this proposed amendment – August 1, 2001 and November 11, 2001 – are earlier than the filing date of June 13, 2002. The amendment would therefore be proper under Section 1505.01(d).

The opposer RUI One Corp. is in no way prejudiced or inconvenienced by the proposed amendment. The opposer asserts an incontestable registration with dates of first use well before either the erroneous or corrected dates asserted by the applicant. Priority is not at issue and is not affected by this amendment.

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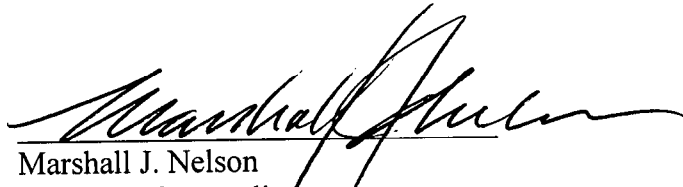
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For all of the foregoing reasons applicant requests that the Board approve the proposed amendment.

Dated: April 27, 2004

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

A handwritten signature in black ink, appearing to read "Marshall J. Nelson", is written over a horizontal line.

Marshall J. Nelson

Attorneys for Applicant:

Cutters Point, Inc.

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(206) 628-7733

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

| | | |
|--|---|-------------------------|
| RUI ONE CORP. |) | |
| D/B/A RESTAURANTS UNLIMITED, INC. |) | |
| |) | |
| Opposer, |) | Opposition No. 91156784 |
| |) | |
| v. |) | DECLARATION IN SUPPORT |
| |) | OF MOTION TO AMEND |
| |) | APPLICATION |
| CUTTERS POINT, INC., |) | |
| |) | |
| Applicant. |) | |
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| In the matter of application Serial No.: | 76/420851 |
| Filed: | June 13, 2002 |
| For the mark: | CUTTERS POINT |
| Published in the Official Gazette: | January 28, 2003 |

DECLARATION OF MARSHALL J. NELSON


I, Marshall J. Nelson, declare that I am an attorney for the applicant Cutters Point, Inc. and am authorized to make this declaration on its behalf.

I have investigated the circumstances of this amendment, and I have determined that there was an inadvertent error on the application for this registration at the time of filing, namely: the year in the date of first use was stated as 2000, instead of the correct year 2001, and the date of first use in commerce was not separately stated. The correct date of first use should be August 1, 2001. The correct date of first use in commerce should be November 11, 2001. Both dates are prior to the application filing date of June 14, 2002.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting

therefrom, declares that all statements made of my own knowledge are true; and all statements made on information and belief are believed to be true.

Dated: April 27, 2004 at Seattle, Washington.


MARSHALL J. NELSON

EL852793761US

CERTIFICATE OF MAILING AND SERVICE

I hereby certify that on April 27, 2004 I mailed (via U.S. Express Mail
No. EL852793761US) the original of the attached MOTION TO AMEND APPLICATION
and DECLARATION IN SUPPORT OF MOTION TO AMEND APPLICATION regarding the
mark CUTTERS POINT (Serial No. 76/420851) to:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

with a copy via First Class Mail to:

Cindy L. Caditz
Christensen O'Connor Johnson Kindness PLLC
1420 Fifth Avenue, Suite 2800
Seattle, WA 98101-2347