

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

mc/ryan

Mailed: December 19, 2005

Opposition No. 91161584

JOHNSON & JOHNSON

v.

First Aid Only, Inc.

**Karyn K. Ryan, Interlocutory Attorney
Trademark Trial and Appeal Board:**

On November 8, 2005, applicant filed a proposed amendment to its application Serial No. 76394583, with opposer's consent.

Applicant's mark, replicated below, consists of the terms FIRST AID ONLY with a design of three quadrilaterals.



By the proposed amendment, applicant seeks to amend its special form mark by restricting the color in which the quadrilateral design is displayed and to add the following restrictive description¹ of the mark:

¹ Applicant misidentifies its amendment as one seeking a "disclaimer" in the application when, in fact, applicant is seeks to add a restrictive description of its mark to its application.

"The quadrilaterals in the mark are not displayed in the color red or orange, or in white on a red or orange background."

Trademark Rule 2.133(a) provides, in pertinent part, that an application which is the subject of an inter partes proceeding may not be amended in substance except with the consent of the adverse party and the approval of the Board, or upon motion. However, the proposed amendment must also comply with all other rules and statutory provisions.

A description of the mark, which must be acceptable to the Office, may be included in an application, and must be included if required by the examiner. If the mark is displayed in color or a color combination, the colors should be described. See Trademark Rule 2.37. See TMEP § 808 et seq. (4th ed. 2005). It follows that, if there is a color restriction in the mark, it should be stated in an appropriate description in the application. The Office requires that descriptions of marks to be both accurate and concise. See TMEP §808.02 (4th ed. 2005).

Moreover, an applicant may not amend the description of the mark if the amendment is a material alteration of the mark on the drawing or description filed with the original application. See Trademark Rules §§2.52(a) and 2.72. See also *In re Thrifty, Inc.*, 274 F.3d 1349, 61 USPQ2d 1121 (Fed. Cir. 2001) and TMEP §807.14(a) (4th ed. 2005) regarding material alteration.

We find that the proposed description presents an acceptable restriction on the applicant's mark which does not materially alter the character of the mark, as prescribed by Trademark Rule 2.72(a). In view thereof, and inasmuch as opposer has consented to the proposed amendment, it is approved and entered.

Accordingly, applicant's motion to amend is **granted**. See Trademark Rule 2.133(a).

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

Proceedings otherwise are suspended until further written notice by the Board.

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Notice Regarding TTAB Electronic Resources and New Rules

- TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.
- Parties should also be aware of changes in the rules affecting trademark matters, including rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes are available at www.uspto.gov.
- The second edition of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at www.uspto.gov/web/offices/dcom/ttab/tbmp/.