

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

Winter/kk

Mailed: November 10, 2008

Opposition No. 91173351

Kellogg North America
Company

v.

NutriSystem IPHC, Inc.

On October 6, 2008, the parties filed applicant's proposed amendment to its application Serial No. 78690204, with opposer's consent, and opposer's withdrawal without prejudice of the opposition, contingent upon entry of the amendment.

By the proposed amendment applicant seeks to change the identification of goods as follows:

From: "Milkshakes, puddings, breakfast, lunch, dinner entrees, snacks and desserts, namely, cereals, cereal bars, namely, ready to eat, cereal derived food bars, muffins, breads, dessert bars, namely, brownies, coffee flavored dessert bars, chocolate crunch bars, peanut butter, caramel and mint chewy chocolate bars, fruit bars, nut bars, rice, sauces, namely, salsas and tomato sauces, gravies, salad dressings, frozen bars and ices, namely fudge bars, frozen confections and ice pops, food beverages with a coffee, tea or

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cocoa base, namely, coffee based beverages containing milk, cocoa based beverages containing milk, iced teas,"

To:¹ "Milkshakes, puddings, meal entrees, snacks and desserts, namely, muffins, breads, dessert bars, namely, brownies, coffee flavored dessert bars, chocolate crunch bars, peanut butter, caramel and mint chewy chocolate bars, rice, sauces, namely, salsas and tomato sauces, gravies, salad dressings, frozen bars and ices, namely fudge bars, frozen confections and ice pops, food beverages with a coffee, tea or cocoa base, namely, coffee based beverages containing milk, cocoa based beverages containing milk, iced teas."

Inasmuch as the amendment is clearly limiting in nature as required by Trademark Rule 2.71(a), and because opposer consents thereto, it is approved and entered. See Trademark Rule 2.133(a).

The contingency in opposer's withdrawal having now been met, the opposition is dismissed without prejudice.

***By the Trademark Trial
and Appeal Board***

¹ The wording "breakfast, lunch, dinner" has been deleted and is replaced with the term "meal". The wording "cereals, cereal bars namely, ready to eat, cereal derived food bars" has also been deleted.