

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

ac/gcp

Mailed: February 10, 2009

Opposition No. 91176125

National Tobacco Company,
L.P.

v.

Beech-Nut Nutrition
Corporation

George C. Pologeorgis, Interlocutory Attorney:

On January 12, 2009 (via certificate of mailing), applicant filed a proposed amendment to its application Serial No. 78666753, with opposer's consent, and a response to the Board's December 11, 2008 notice of default.

In view of the reasons stated therein, the notice of default is set aside and Board's January 13, 2009 order sustaining this opposition is hereby vacated.

By the proposed amendment applicant seeks to change the identification of goods in International Classes 18 and 21.

from:

"diaper bags, tote bags, backpacks, duffel bags, fanny packs and waist packs" in International Class 18; and

"cooler bags" in International Class 21.

to:

"diaper bags, tote bags, backpacks, duffel bags, fanny packs and waist packs all for use by infant and child care-givers as a secondary source indicator of applicant's infant-related products" in International 18; and

"cooler bags all for use by infant and child care-givers as a secondary source indicator of applicant's infant-related products" in International Class 21.

While the amendment is clearly limiting in nature as required by Trademark Rule 2.71(a), the Board is unable to accept the amendment at this time inasmuch as the use of the term "applicant's" in the amended identifications is unacceptable. Indeed, the words "applicant" or "registrant" should not appear in the identification of goods. Before registration, use of the term "registrant" is inaccurate, and, after registration, use of the term "applicant" is inaccurate. See TMEP § 1402.09. Applicant, however, may substitute the wording "trademark owner" for the term "applicant," if it chooses to submit a revised amendment as permitted below. Notwithstanding, applicant's motion to amend is **denied** as filed.

Applicant is allowed **thirty days** from the mailing date of this order in which to submit a revised amendment with opposer's consent for the Board's consideration which complies with Board rules and regulations, failing which the opposition will go forward on the application as originally filed.

Proceedings are otherwise suspended.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>