

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

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Mailed: September 21, 2011

Opposition No. 91200032

Orange Bang, Inc.

v.

John M Osmanski

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

On September 14, 2011, applicant filed proposed amendments to its application Serial No. 85022627, with opposer's consent.

By the proposed amendment applicant seeks to change the identification of goods **from** "ice and ice creams" **to** "caffeinated ice cream."

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).

Applicant also seeks to amend the mark **from:** "BANG!", **to:** "BANG!! CAFFEINATED ICE CREAM", and to add a disclaimer of the wording "CAFFEINATED ICE CREAM".¹

¹ Although the basis for applicant's application is Trademark Act § 1(b), applicant submitted an example of how it is presently using the mark, which includes the term "CAFFEINATED ICE CREAM."

Applicant's proposed, consented amendment to its drawing is acceptable. See Trademark Rules 2.72; and 2.133(a). However, applicant must submit a substitute drawing page. Applicant is allowed until **THIRTY DAYS** from the mailing date of this order in which to do so. Entry of the amendment is accordingly deferred.

Applicant's proposed, consented motion to amend its application by disclaiming the term CAFFEINATED ICE CREAM is acceptable in the standardized format as follows:

No claim is made to the exclusive right to use CAFFEINATED ICE CREAM apart from the mark as shown.

See Trademark Act Section 6; *In re MCI Communications Corp.*, 21 USPQ2d 1534 (Comm'r Pats. 1991); and TMEP §§ 1213.01(c) and 1213.08(a)(i) (7th ed. Oct. 2010).

However, entry of the disclaimer is deferred until a substitute drawing is submitted.

If this resolves the dispute between the parties, opposer is allowed until **THIRTY DAYS** from the mailing date of this order in which to file a withdrawal of the notice of opposition, and applicant is allowed until **THIRTY DAYS** from the mailing date of this order in which to file a withdrawal of the counterclaim, failing which, this proceeding will go forward on the application as amended and on the counterclaim.

Proceedings are otherwise suspended.
