

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

Nmt/wbc

Mailed: April 1, 2013

Opposition No. 91200405

Casella Wines Pty Ltd.

v.

Nature & Innovation

**Andrew P. Baxley, Interlocutory Attorney:**

On January 14, 2013, applicant filed a consented motion to amend its application Serial No. 79072117, pursuant to the parties' settlement agreement.<sup>1</sup> By the proposed amendment, applicant seeks to change the identification of goods in International Class 32<sup>2</sup>

**from**

mineral and sparkling waters; fruit drinks and fruit juices; non-alcoholic fruit extracts used in the preparation of beverages; syrups for beverages; non-alcoholic malt beverages; preparations for making beverages, namely, fruit juice; essences for making beverages, namely, fruit juice; vegetable juices; fruit nectars

**to**

mineral and sparkling waters; fruit drinks and fruit juices; non-alcoholic fruit extracts; syrups for beverages; non-alcoholic beverages; preparations for making beverages; essences for making beverages; essences for making beverages; vegetable juices (beverages); fruit nectars.

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<sup>1</sup> On November 9, 2012, applicant filed a corresponding amendment to the identification of goods for International Registration No. 1011034 with the International Bureau.

<sup>2</sup> The identification of goods in International Classes 30 and 31 remain unchanged.

Notwithstanding the parties' settlement agreement, the proposed amendment must comply with applicable rules. By such proposed amendment, applicant seeks to delete the limiting language "used in the preparation of beverages," "malt," and "namely, fruit juice" from the identification of goods in International Class 32 that it had added by way of an October 22, 2010 amendment during *ex parte* examination.<sup>3</sup> The proposed amendment, by deleting the aforementioned language, impermissibly expands the scope of the identification of goods, as acceptably amended. See Trademark Rule 2.71(a); TMEP Sections 1402.01(c) and 1402.07(e) (October 2012). Further, such deletions are unacceptable because they make the

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<sup>3</sup> In the involved application, applicant originally included the following identification of goods in International Class 32: "[b]eers; mineral and sparkling waters; fruit drinks and fruit juices; non-alcoholic fruit extracts; syrups for beverages; non-alcoholic beverages; preparations for making beverages; essences for making beverages; vegetable juices (beverages); fruit nectars." In September 28, 2009 and April 30, 2010 Office Actions, the examining attorney determined that such identification was unacceptable as indefinite and required clarification.

In an October 22, 2010 response to the April 30, 2010 Office Action, applicant amended the identification of goods in International Class 32 to "[b]eers; mineral and sparkling waters; fruit drinks and fruit juices; non-alcoholic fruit extracts used in the preparation of beverages; syrups for beverages; non-alcoholic malt beverages; preparations for making beverages, namely, fruit juice; essences for making beverages, namely, fruit juice; vegetable juices; fruit nectars." The examining attorney accepted this identification, and the involved application was published for opposition. "Once an applicant amends the identification of goods and/or services in a manner that is acceptable to the examining attorney, the amendment replaces all previous identifications and restricts the scope of goods/services to that of the amended language." TMEP Section 1402.07(e). Applicant deleted "[b]eers" from the identification of goods by way of the November 9, 2012 amendment to International Registration No. 1011034. See TMEP Section 1902.02(f).

By the proposed amendment that applicant filed on January 14, 2013, applicant attempts to restore the original identification of goods (with the exception of "[b]eers"). Such attempt is not well-taken.

amended portions of the identification indefinite. See TMEP Section 1402.01(c); September 28, 2009 and April 30, 2010 Office Actions. Moreover, parentheticals should not be used in identifications of goods and services. See TMEP Section 1402.12. Based on the foregoing, the motion to amend is denied.

Proceedings herein are suspended until May 31, 2013 to allow the parties time in which to negotiate and file a renewed motion to amend the identification of goods in the involved application. If there is no word from the parties, proceedings herein will resume without further action by the Board on June 1, 2013 under the following schedule.

Expert Disclosures Due	6/11/2013
Discovery Closes	7/11/2013
Plaintiff's Pretrial Disclosures Due	8/25/2013
Plaintiff's 30-day Trial Period Ends	10/9/2013
Defendant's Pretrial Disclosures Due	10/24/2013
Defendant's 30-day Trial Period Ends	12/8/2013
Plaintiff's Rebuttal Disclosures Due	12/23/2013
Plaintiff's 15-day Rebuttal Period Ends	1/22/2014

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.