

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

am

Mailed: December 7, 2012

Opposition No. 91208055

Kellogg North America
Company

v.

Barilla G.E R. Fratelli -
Società Per Azioni

Jennifer Krisp, Interlocutory Attorney:

On November 29, 2012, applicant filed a proposed amendment to its application Serial No. 85528263, with opposer's consent.¹ On November 30, 2012 opposer filed withdrawal without prejudice of the opposition, with applicant's consent, contingent upon entry of the amendment.

By the proposed amendment applicant seeks to amend the identification of goods in Class 30

from

"sauce, salad dressings, food seasonings, seasoning mixes, seasonings, prepared and/or packaged foods, dishes, meals, meal kits, and microwaveable foods consisting primarily of rice, bread, cereals, noodles, ready-made sauces and/or pastries; snacks made from cereals, biscuits, crackers, rusks, breadsticks, dry

¹ Applicant's amendment does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119. Compliance with this service rule is expected in all future filings in this proceeding. The Board may decline to consider any motion that does not include proof of service.

breads; pizza; calzones; panini sandwiches; stromboli;
ravioli; tortellini; manicotti; pasta shells; lasagna"

to

"sauce, salad dressings, food seasonings, seasoning mixes, seasonings, prepared and/or packaged foods, dishes, meals, meal kits, and microwaveable foods consisting primarily of rice, bread, cereals, noodles (excluding cereal bars and waffles), ready-made sauces and/or pastries; snacks made from cereals (excluding cereal bars and waffles), biscuits, crackers, rusks, breadsticks, dry breads; pizza; calzones; panini sandwiches; stromboli; ravioli; tortellini; manicotti; pasta shells; lasagna."

The identification of goods in Class 29 remains unchanged.

The proposed amendment is limiting in nature as required by Trademark Rule 2.71(a). See Trademark Rule 2.133(a).

However, parentheses and brackets are not to be used in identifications of goods and services. The Post Registration Section of the USPTO uses single brackets to indicate that goods/services have been deleted from a registration either by amendment under 15 U.S.C. §1057, filing of a partial affidavit of continued use under 15 U.S.C. §1058 or 15 U.S.C. §1141k, or filing of a partial renewal application under 15 U.S.C. §1059. To avoid confusion, applicants should not use parentheses or brackets in the identification. See TMEP Section 1402.12.

In this instance, the parentheses do not merely provide further information about the goods directly preceding them, and furthermore the proposed amendment can be accurately drafted so as to delete the parentheses.

In view thereof, entry of the amendment is denied, and the parties are allowed until thirty days from the mailing

date of this order in which to file an amendment which is in compliance with all applicable authorities, failing which the Board will resume proceedings with respect to the identification of goods as presently identified.

Proceedings are otherwise suspended.