

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Am

Mailed: August 25, 2016

Opposition No. 91212253

*Miss Elaine, Inc.*

*v.*

*Empire Resorts, Inc.*

**Benjamin U. Okeke, Interlocutory Attorney:**

On August 17, 2016, Applicant filed a proposed amendment to its application Serial No. 85733774, with Opposer's consent.<sup>1</sup>

By the proposed amendment, Applicant seeks to amend the identification of goods in International Class 25 to add the underlined language and remove the stricken language as follows:

Clothing, namely, for men, women, and children in the nature of shirts, pants, skirts, dresses, shorts, jackets, footwear, sweat pants, sweat shirts, sweat shorts, warm up suits, jogging suits, swim wear, T-shirts, tank tops, nightshirts and night gowns, pajamas, robes, dresses, rainwear, generic hats, generic caps and visors, vests, scarves, neckties, head bands and wrist bands, all of the foregoing excluding women's clothing expressly for women, and not relating to baseball or softball or to a baseball or softball team, league, mascot or stadium.

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<sup>1</sup> Applicant's filing does not indicate proof of service of a copy of same on counsel for Opposer, as required by Trademark Rule 2.119. A copy of the filing can be viewed using TTABVUE at <http://ttabvue.uspto.gov>.

Inasmuch as the amendment is clearly limiting in nature as required by Trademark Rule 2.71(a), and because Opposer consents, the amendment is **APPROVED** and **ENTERED**. *See* Trademark Rule 2.133(a).

If the amendment resolves this proceeding, Opposer is allowed until **THIRTY DAYS** from the mailing date of this order to file a withdrawal of the opposition, failing which the opposition will go forward on the application as amended. *See* Trademark Rule 2.106(c).

If no response is filed, the proceeding will be resumed and dates reset, as appropriate. The proceeding is otherwise **SUSPENDED**.