

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

RA

Mailed: July 18, 2017

Opposition No. 91232337

YogaGlo, Inc. and FitnessGlo, Inc.

v.

U Run LLC

Elizabeth A. Dunn, Attorney (571-272-4267):

On May 31, 2017, Applicant filed a proposed amendment to application Serial No. 86782657 without Opposer's consent.

By the proposed amendment Applicant seeks to amend the identification of goods to read (addition underlined):

organizing, arranging, hosting and conducting running events; providing a website featuring information relating to the sport of running and running events; and providing online and non-downloadable electronic newsletters regarding running and running events, none of the aforesaid services to include video (including streaming video).

Although the amendment is clearly limiting in nature as required by Trademark Rule 2.71(a), it cannot be approved inasmuch as the Opposer has not consented thereto. Trademark Rule 2.133(a) provides:

An application subject to an opposition may not be amended in substance nor may a registration subject to a cancellation be amended or disclaimed in part, except with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or upon motion granted by the Board.

An unconsented motion to amend in substance is generally deferred until final decision or until the case is decided upon summary judgment. *See Zachry Infrastructure LLC v. American Infrastructure, Inc.*, 101 USPQ2d 1249, 1255-56 (TTAB2011) (unconsented motion to amend to Supplemental Register deferred until summary judgment or final hearing); *Enbridge Inc. v. Excelerate Energy L.P.*, 92 USPQ2d 1537, 1539 n.3 (TTAB 2009) (motion to amend identification of goods and dates of use deferred until final hearing); *Space Base Inc. v. Stadis Corp.*, 17 USPQ2d 1216, 1219 (TTAB 1990) (motion to amend identification of goods deferred); *Fort Howard Paper Co. v. C.V. Gambina Inc.*, 4 USPQ2d 1552, 1554 (TTAB 1987) (motion to amend dates of use deferred) and TBMP §514 (2017).

Here, inasmuch as the proceeding has been suspended for settlement negotiations, the failure to include Opposer's consent may have been inadvertent. Accordingly, proceedings are suspended for thirty days from the mailing date of this order to allow Applicant to submit Opposer's consent to the amendment, failing which action on the unconsented motion will be deferred until trial (or motion for summary judgment) and proceedings herein will go forward based on the application as published for opposition.

If no response is filed, proceedings will be resumed and dates reset, as appropriate.

Proceedings are otherwise suspended.