

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Lw/wbc

October 29, 2018

Opposition No. 91236414

Green Heart Labs, LLC

v.

Skinboss Inc.

Wendy Boldt Cohen, Interlocutory Attorney:

This case comes before the Board on Applicant's motion to divide and amend the involved application Serial No. 87129127. *See* 7 TTABVue; Trademark Rule 2.127(a). In its motion, Applicant seeks to divide the application into a "parent" application to include the services identified in International Class 35 and a new "child" application to include the services identified in International Class 3.

Additionally, Applicant filed a proposed amendment to its application Serial No. 87129127, seeking to amend the identification of goods in International Class 3 as follows.

From: Perfumes; perfumery; essential oils for personal use, namely, bath oils, body oils, and massage oils; soaps, and cosmetics, namely, bath gels, bath powders, beauty masks, body creams, body powders, cosmetic pencils, cotton for cosmetic purposes, hand creams, night creams, skin cleansing creams, skin creams, vanishing creams, eye creams, skin lotions, facial lotions, body lotions, skin moisturizers, night creams, shower gels, skin clarifiers, skin soaps, suntanning preparations, moisturizers; make-up products, namely, eye makeup, eye makeup remover, eye pencils, eye shadow, eyebrow pencils, eyeliner, face

powder, lipstick, make-up mascara, nail polish, nail polish remover, rouge; hair lotions; hair shampoos

To: Essential oils for personal use, namely, body oils; cosmetics, namely, beauty masks, body creams, hand creams, night creams, skin creams, eye creams, skin lotions, facial lotions, body lotions, skin moisturizers, moisturizers; make-up products, namely, eyeliner, lipstick, make-up mascara

The amendment is limiting in nature, as required by Trademark Rule 2.71(a). Although Opposer submitted a “Non-Opposition to Applicant’s Motion,” Opposer’s submission does not expressly indicate that it consents to the motion, only that it does not oppose the motion. When a request to amend an application or registration that is the subject of a Board inter partes proceeding is made with the consent of the other party or parties, and the proposed amendment is in accordance with the applicable rules and statutory provisions, the request ordinarily will be approved by the Board. TBMP § 514.02. However, the Board generally will defer determination of a timely filed (i.e., pretrial) unconsented motion to amend in substance until final decision, or until the case is decided upon summary judgment. TBMP § 514.03.

Based on the parties’ submissions, it appears that the proposed amendment could be the result of an agreement and the amendment made with Opposer’s consent. In view thereof, Opposer is allowed **thirty days** from the mailing date of this order to expressly provide its consent to the proposed amendment. Further, inasmuch as Opposer indicates that it plans to file a stipulation of the parties, Opposer may also include the stipulation in its submission regarding consent.¹ *See* 9 TTABVue.

¹ If appropriate, Opposer may indicate the stipulation is contingent upon the Board’s approval of Applicant’s motion to amend.

Proceedings remain suspended.²

² Opposer's motion to withdraw its motion for leave to amend its notice of opposition is noted. *See* 5 TTABVUE; 10 TTABVUE. In view thereof, Opposer's motion is withdrawn and Applicant's response thereto is moot. *See* 8 TTABVUE.