

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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September 27, 2018

Opposition No. 91239677

Bella + Canvas, LLC

v.

Kobe Family Entertainment, Inc.

Geoffrey M. McNutt, Interlocutory Attorney:

On September 21, 2018, Applicant filed a motion to amend its application Serial No. 87386378.

By the proposed amendment, Applicant seeks to delete the goods in International Class 25 in their entirety,¹ “in the event that the Board deems such amendment necessary to dismiss the opposition.” 9 TTABVUE 2. In its motion, Applicant also notes that “[t]he Board may elect to defer its decision on this motion until it considers the overall merits of this Opposition.” *Id.* n.1 (citing *Space Base Inc. v. Stadis Corp.*, 17 USPQ 1125 (TTAB 1990) (deferring decision on motion to amend identification of goods until final decision)).

¹ Applicant’s proposed amendment to its identification of goods leaves unchanged the identification of goods and services in International Classes 9, 24, 41 and 45, which are not subject to the instant opposition.

Regarding Applicant's proposed deletion of International Class 25, the Board notes that only the goods in Class 25 have been opposed, and the sole ground for opposition is likelihood of confusion under Section 2(d), 15 U.S.C. § 1052(d). *See* 1 TTABVUE 1 & 7. Upon final determination of the Section 2(d) claim on the merits, a finding of likelihood of confusion as to any one of the goods in Class 25 would result in a finding of likelihood of confusion for the entire class. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981) (it is sufficient to find likelihood of confusion as to the entire class if likelihood of confusion is found with respect to use of the mark on any item in a class that comes within the description of goods); *see also Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014); *Baseball America Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844, 1847 n.9 (TTAB 2004). Accordingly, if likelihood of confusion is found as to any item in Class 25, deletion of Class 25 would not avoid a finding of likelihood of confusion as to the entire class.

Furthermore, in an opposition to an application having multiple classes, if the applicant files a request to amend the application to delete an opposed class in its entirety, the request for amendment is, in effect, an abandonment of the application with respect to that class, and is governed by Trademark Rule 2.135. *See* TBMP § 602.01 (2018). Trademark Rule 2.135 provides in relevant part:

After the commencement of an opposition ... if the applicant files a written abandonment of the application or of the mark without the written consent of every adverse party to the proceeding, judgment shall be entered against the applicant.

In view thereof, and because Opposer's written consent to the abandonment of Class 25 is not of record, Applicant's abandonment of Class 25 would result in entry of judgment as to the goods in Class 25, regardless of whether the amendment was entered before or during trial.²

Accordingly, Applicant's proposed amendment is deferred until final hearing, at which time it will be given whatever consideration it warrants.

Alternatively, if, by its current motion to delete Class 25, Applicant intended to accept entry of judgment against it as to Class 25, then Applicant may file a renewed motion to in which it clearly states its intention to do so.

As a final matter, Opposer's May 30, 2018, motion to substitute Bella + Canvas, LLC, as the opposer in place of Color Image Apparel, Inc., is granted as conceded and for good cause. The marks and registrations pleaded by Color Image Apparel, Inc., as the original opposer, have been assigned to Bella + Canvas, LLC. The assignment was recorded in the Assignment Recordation Division of the USPTO on March 2, 2018, at Reel/Frame 6298/0654. After commencement of an opposition, if a mark pleaded by the opposer is assigned, the assignee may be substituted rather than joined when, as here, the applicant raises no objection to substitution. TBMP § 512.01. Accordingly, Bella + Canvas, LLC, is substituted as the opposer in this proceeding.

Dates remain as set in the motion to suspend filed and granted on May 31, 2018. *See* 6 & TTABVUE.

² In either case, the application then would proceed with respect to the unopposed goods and services in International Classes 9, 24, 41 and 45.