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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91252274
Party	Defendant Allies Group Pte. Ltd.
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Submission	Motion to Amend/Amended Answer or Counterclaim
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Attachments	motion to amend applicaiton allies of skin.pdf(567627 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Savage Love, LLC., §
§
Opposer, §
§ Opposition No. 91/252,274
v. §
§
Allies Group Pte. Ltd., §
§
Applicant. §

MOTION TO AMEND APPLICATION

Applicant, Allies Group Pte. Ltd. (“Applicant”) files this Unconsented Motion to Amend Application Serial No. 88/579,590 pursuant to 37 CFR Section 2.133 to narrow the issues at trial. Applicant’s counsel asked for consent via e-mail on November 15, 2019 to Opposer’s Counsel, and did not receive a response.

On November 14, 2019, Applicant filed its Answer to Opposer Savage Love, LLC’s (“Opposer”) Notice of Opposition. As an affirmative defense, Applicant entered the following amendment of its description of goods and services.

Anti-wrinkle cream; Beauty masks; Cosmetic preparations for skin care; Cosmetic soaps; Cosmetic tanning preparations; Cosmetics; Cuticle removing preparations; Hair cleaning preparations; Moisturizing creams; Skin whitening creams; Skin whitening preparations; Wrinkle-minimizing cosmetic preparations for topical facial use; Age spot reducing creams; Cosmetic masks; Cosmetic preparations for skin renewal; Cosmetic preparations for slimming purposes; Facial masks; Facial moisturizers; Non-medicated bath preparations; Non-medicated lip care preparations; Non-medicated skin toners; Skin moisturizer, in Class 3

~~Advertising services; Business management; Mail order services featuring cosmetic and beauty care products; Marketing services; On-line retail store services featuring cosmetic and beauty care products; On-line wholesale store services featuring cosmetic and beauty care products; Retail store services featuring cosmetic and beauty care products; Sales promotion services; Wholesale store services featuring cosmetic and beauty care products; Mail order catalog services featuring cosmetic and beauty care products; Providing incentive award programs for customers~~

~~through issuance and processing of loyalty points for on-line purchase of a company's goods and services~~, in Class 35;
to:

Anti-wrinkle cream; Beauty masks; Cosmetic preparations for skin care; Cosmetic soaps; Cosmetic tanning preparations; Cosmetics; Cuticle removing preparations; Hair cleaning preparations; Moisturizing creams; Skin whitening creams; Skin whitening preparations; Wrinkle-minimizing cosmetic preparations for topical facial use; Age spot reducing creams; Cosmetic masks; Cosmetic preparations for skin renewal; Cosmetic preparations for slimming purposes; Facial masks; Facial moisturizers; Non-medicated bath preparations; Non-medicated lip care preparations; Non-medicated skin toners; Skin moisturizer, in Class 3;

Mail order services featuring cosmetic and beauty care products; On-line retail store services featuring cosmetic and beauty care products; On-line wholesale store services featuring cosmetic and beauty care products; Retail store services featuring cosmetic and beauty care products; Wholesale store services featuring cosmetic and beauty care products; Mail order catalog services featuring cosmetic and beauty care products, in Class 35.

This amendment removed “advertising services,” “business management,” “marketing services,” “sales promotion services,” and “providing incentive award programs for customers through issuance and processing of loyalty points for on-line purchase of a company’s goods and services”. The remaining language in Applicant’s description of goods and services specifically pertains to cosmetics and the cosmetic industry.

Pursuant to TBMP 311.02(b), Applicant amended its identification of goods and services to put Opposer on early notice of this proposed limitation. As the Board does not review the Answer at this stage of the proceeding, Applicant has filed this Motion.

The standard for allowing an amendment of an opposed application is set forth in *Johnson & Johnson v. Stryker Corp.*, 109 USPQ2d 1077. *Johnson & Johnson* provides four (4) requirements for amending the application, of which three (3) apply to an intent-to-use application such as this one.

1) The Proposed Amendment must serve to limit the broader identification of goods and services.

In this case, Applicant has removed five (5) different services from the Application. It has not added any new services, or expanded on the services already identified in the application.

2) Applicant must consent to the entry of judgment on the grounds for opposition with respect to the broader identification of goods or services present at publication.

Applicant consents to the entry of judgment on the grounds of opposition with respect to the broader identification of services in the application, namely, ““advertising services,” “business management,” “marketing services,” “sales promotion services,” and “providing incentive award programs for customers through issuance and processing of loyalty points for on-line purchase of a company’s goods and services”

3) If the applicant wishes to avoid the possibility of a res judicata effect by the entry of judgment on the original application, the applicant must make a prima facie showing that the proposed amendment serves to change the nature and character of the goods or services or restrict their channels of trade and customers so as to introduce a substantially different issue for trial

In paragraph 17 of the Notice of Opposition, Opposer states that Applicant’s advertising services, marketing services and sales promotion services overlap with Opposer’s public advocacy and lobbying services. By eliminating these services, and incentive award and business management services, Applicant is removing services that are not specifically associated with its cosmetic products and retail services in the field of cosmetics. Applicant believes that removing these services will greatly simplify this matter as the services will now be Opposer’s public advocacy services and Applicant’s cosmetics.

4) Where required to support the basis of the subject application, any specimens of record must support the goods or services as amended, and applicant must then introduce evidence during its testimony period to prove use of its mark with the remaining goods or services prior to the relevant date as determined by the application’s filing basis.

The Board has stated that only three *Stryker* requirements apply to an intent-to-use application, such as that filed by Applicant. *Wisconsin Cheese Group, LLC v. Comercializadora de Lacteos y Derivados S.A. de C.V.*, 118 USPQ2d 1267 (TTAB 2016).

Applicant hereby requests that the Board enter this amendment as soon as practicable so to narrow the issues set forth in this opposition. Applicant has filed this Motion early in the proceeding so not to prejudice Opposer, and Applicant believes discovery and trial can be more efficiently managed given Applicant's removal of broader services from its application.

Respectfully submitted,

Dated: November 20, 2019

By: /Jon A. Schiffrin/
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion to Amend Application was served by First Class Mail On November 20, 2019 to the following attorneys of record:

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