

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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lh/KGC

February 28, 2022

Opposition No. 91263393 (parent)

Enterprise Holdings, Inc.

v.

Big Truck Rental, LLC

Opposition No. 91263394

Vanguard Trademark Holdings USA LLC

v.

Big Truck Rental, LLC

Kevin G. Crennan, Interlocutory Attorney:

On February 15, 2022, the Applicant filed the parties' stipulated motion to amend application Serial No. 88305341, with Opposer's consent, and Opposer's withdrawal of the opposition, contingent upon entry of the amendment. 22 TTABVUE.

By the proposed amendment, Applicant seeks to amend the recitation of services as follows (added wording is in bold font):

FROM

Class 35: Retail services and online retail services through direct solicitation by dealers, distributors, and sales persons directed to customers featuring vehicles in the nature of pre-owned refuse trucks that can be purchased; **all of the aforementioned services not to include rental of vehicles or trucks less**

than 19,500 10,001 gross vehicle weight rating (GVWR) as identified by the United States Department of Energy's Vehicle and Weight Classes & Categories as Class 3 trucks

Class 39: Rental of trucks all of the aforementioned services not to include rental of vehicles or trucks less than 19,500 10,001 gross vehicle weight rating (GVWR) as identified by the United States Department of Energy's Vehicle and Weight Classes & Categories as Class 3 truck

TO

Class 35: Retail services and online retail services through direct solicitation by dealers, distributors, and sales persons directed to customers featuring vehicles in the nature of pre-owned refuse trucks that can be purchased; all of the aforementioned services not to include rental of vehicles or trucks less than 19,500 10,001 gross vehicle weight rating (GVWR) as identified by the United States Department of Energy's Vehicle and Weight Classes & Categories as Class 3 trucks

Class 39: Rental of trucks all of the aforementioned services not to include rental of vehicles or trucks less than 19,500 10,001 gross vehicle weight rating (GVWR) as identified by the United States Department of Energy's Vehicle and Weight Classes & Categories as Class 3 trucks

A proposed amendment to any application which is the subject of an inter partes proceeding must also comply with all other applicable rules and statutory provisions, including Trademark Rules 2.71-2.75. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE §§ 514.01, 605.03(b) (2021).

The proposed amendment is unacceptable in that the added exclusionary language "rental of vehicles or trucks," which identifies a Class 39 service, appears in the identification in Class 35. An applicant may not add exclusionary language that falls outside the scope of the terms originally identified or that is otherwise qualitatively different from the services as originally identified. TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 1402.06(a) (2021). Further, the amended

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identification contains ampersands; commas, semicolons, and apostrophes are the only punctuation that should be used in an identification. *Id.* § 1402.01(a).

Therefore, the Board cannot accept the proposed amendment and will not enter the amendment.

In view of these findings, the motion to amend is **denied without prejudice**. The present recitation of services, that is, the identification prior to the filing of the motion to amend, remains operative for purposes of future amendment. *See* Trademark Rule 2.71(a); TMEP § 1402.07(d).

However, inasmuch as the filing of the proposed amendment indicates to the Board that the parties are making efforts to settle this matter, proceedings are **suspended**, and the parties are allowed until **thirty (30) days from the date of this order** to file a revised motion to amend, failing which the Board will resume proceedings and reset dates, and the opposition will go forward on the present application.¹

¹ If the parties file a renewed motion to amend, they are directed to review the language in any proposed amendment to ensure its grammatical correctness, e.g., “19,500 10,001” that appears in the instant motion to amend.