

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

February 10, 2022

Opposition No. 91266807

Mattel, Inc.

v.

Stephanie Kewin

Kevin G. Crennan, Interlocutory Attorney:

On February 2, 2022, Applicant filed a proposed amendment to her application Serial No. 88353675, with Opposer's consent. 17 TTABVUE.

By the proposed amendment, Applicant seeks to amend the drawing of the mark from ROLLY POLLY to ROLL-Y POLL-Y.

A proposed amendment to any application which is the subject of an inter partes proceeding is governed by Trademark Rule 2.133, and must also comply with all 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). An applicant may amend the drawing of the mark only if the proposed amendment does not materially alter the mark. See Trademark Rules 2.72(a)(2), (b)(2). The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the drawing of the mark filed with

the original application. *Id.* The controlling question is always whether the old and new forms of the mark create essentially the same commercial impression. *See Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1132 n.1 (Fed. Cir. 2015).

The proposed amendment is unacceptable inasmuch as it materially alters the mark. Specifically, the proposed amendment materially alters the mark because the original mark ROLLY POLLY is a unitary phrase evoking a forward or backwards roll. This commercial impression is lost in the amended mark ROLL-Y POLL-Y as it consists of two, distinct words ROLL and POLL with the arbitrary letter Y appended to the end of each, which is conceptually separated from the terms that precede it through the use of a hyphen. Further, the original mark is likely to be pronounced as “r-oh-lee p-oh-lee” or “r-ah-lee p-ah-lee,” whereas the amended mark is likely to be pronounced as “r-ohl-why p-ohl-why.” Accordingly, the Board cannot accept or enter the proposed amendment.¹

In view of these findings, the motion to amend is denied without prejudice. The present drawing, that is, the drawing prior to the filing of the motion to amend, remains operative for purposes of future amendment.

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

¹ The motion also is not accompanied with the requisite substitute drawing page. *See* Trademark Rule 2.51.

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revised motion to amend, failing which the Board will resume proceedings and reset dates, and the opposition will go forward on the present application.