

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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JLE/ca

February 16, 2023

Opposition No. 91280101

Redbox Automated Retail, LLC

v.

Brian Deangelis

Jennifer L. Elgin, Interlocutory Attorney:

On February 9, 2023, Applicant filed a proposed amendment to application Serial No. 90587609, with Opposer's consent, and Opposer's withdrawal without prejudice of the opposition, contingent upon entry of the amendment.

By the proposed amendment, Applicant seeks to amend the identification of services in International Class 41 as follows (proposed additions shown in bold text):

From: Providing on-line videos featuring entertainment, not downloadable

To: Providing on-line videos featuring entertainment, not downloadable, **all of the aforementioned not including entertainment / streaming content distribution through transactional video on demand (TVOD), subscription video on demand (SVOD), ad-supported video-on-demand (AVOD), and free ad-supported streaming television (FAST) entertainment / streaming content services.**

A proposed amendment to any application or registration 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 TBMP §§ 514.01 and

605.03(b). The proposed amendment to the services in International Class 41 is limiting in nature, as required by Trademark Rule 2.71(a).

The proposed amendment is unacceptable, however, because Applicant must correct the punctuation in the identification to clarify the individual items excluded in the list of services. *See* 37 C.F.R. Trademark Rule 2.32(a)(6); *see also* TMEP § 1402.01(a). Proper punctuation in identifications is necessary to avoid ambiguity. Commas, semicolons, and apostrophes are the only punctuation that should be used in an identification of goods and/or services. *See* TMEP § 1402.01(a). Other punctuation (such as colons, question marks, exclamation points, forward slashes, and periods) should not be used in an identification. Thus, Applicant should (1) delete the period at the end of the identification, and (2) replace the forward slash in the identification of goods or services, if appropriate, or rewrite the identification with the forward slash deleted and the excluded goods or services specified using definite and unambiguous language.

In view of these findings, the motion to amend is **denied without prejudice**. The present identification of goods and 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); *see also* 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 days** from the date of this order

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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.