

UNITED STATES PATENT AND TRADEMARK OFFICE  
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Ky/kb

April 30, 2024

Opposition No. 91290370

*Wise Payments Limited*

*v.*

*Publix Asset Management Company*

**By the Trademark Trial and Appeal Board:**

On April 25, 2024, Opposer filed the parties' stipulated motion to amend Applicant's application Serial No. 97560500 without prejudice, and Opposer's withdrawal without prejudice of the opposition, contingent upon entry of the amendment.

By the proposed amendment, Applicant seeks to delete the goods in International Class 36 and amend the identification of goods in International Classes 9 and 42 as follows (deletions are struck-through):<sup>1</sup>

**Class 9:**

From:

downloadable virtual goods, namely, food, beverages, grocery items, personal care products, prescription drugs, flowers, liquor, clothing, household products and general merchandise for use online and in virtual worlds; downloadable virtual goods, namely, downloadable computer programs featuring food, beverages, grocery items, personal care products, prescription drugs, flowers,

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<sup>1</sup> Unopposed Classes 35, 41, 43 and 44 remain unchanged.

liquor, clothing, household products and general merchandise for use online and in virtual worlds; downloadable multimedia files containing artwork, text, audio, and video files authenticated by nonfungible tokens (NFTs); ~~downloadable loyalty and reward cards that can be redeemed for food, beverages, grocery items, personal care products, prescription drugs, flowers, liquor, clothing, household products and general merchandise; downloadable computer software, namely, software for minting non fungible tokens (NFTs) for facilitating commercial transactions;~~ downloadable software that allows users to access descriptions of grocery items, locate grocery stores, order grocery items, pay for orders, and collect rewards

To:

Downloadable virtual goods, namely, food, beverages, grocery items, personal care products, prescription drugs, flowers, liquor, clothing, household products and general merchandise for use online and in virtual worlds; downloadable virtual goods, namely, downloadable computer programs featuring food, beverages, grocery items, personal care products, prescription drugs, flowers, liquor, clothing, household products and general merchandise for use online and in virtual worlds; downloadable multimedia files containing artwork, text, audio, and video files authenticated by nonfungible tokens (NFTs); downloadable software that allows users to access descriptions of grocery items, locate grocery stores, order grocery items, pay for orders, and collect rewards

**Class 36: DELETED**

**Class 42:**

From:

providing temporary use of non-downloadable software that gives users the ability to upload, modify and share virtual reality content, augmented reality content, mixed reality content, information, experiences and data; ~~providing temporary use of non-downloadable software for purchasing virtual goods, namely, food, beverages, grocery items, personal care products, prescription drugs, flowers, liquor, clothing, household products and general merchandise; non-downloadable multimedia files containing artwork, text, audio, and video files; software as a service services featuring software for purchasing crypto-collectibles and application tokens; platform as a service services featuring computer software for purchasing crypto-collectibles and application tokens; Entertainment services, namely, providing temporary use of non-downloadable digital media, namely, digital assets, digital collectibles, digital~~

~~tokens~~; providing temporary use of non-downloadable software that allows users to access descriptions of grocery items, locate grocery stores, order grocery items, pay for orders, and collect rewards; pharmacy services provided in virtual reality and augmented reality environment

To:

Providing temporary use of non-downloadable software that gives users the ability to upload, modify and share virtual reality content, augmented reality content, mixed reality content, information, experiences and data; providing temporary use of non-downloadable software that allows users to access descriptions of grocery items, locate grocery stores, order grocery items, pay for orders, and collect rewards; pharmacy services provided in virtual reality and augmented reality environments

With respect to Class 36, in an opposition to any application having multiple classes, if the applicant files a request to amend the application to delete an opposed class in its entirety, as is the case here, 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* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) §§ 602.01 and 605.03(b) (2023). In view thereof, and because Opposer has provided its written consent, application Serial No. 97560500 **stands abandoned as to International Class 36.**

With respect to Classes 9 and 42, the proposed amendments thereto are limiting in nature, as required by Trademark Rule 2.71(a). Because Opposer consents thereto, the amendments are approved and entered. *See* Trademark Rule 2.133(a).

The contingency in Opposer's withdrawal having now been met, the opposition is dismissed without prejudice in accordance with the parties' agreement.