

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

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October 2, 2019

Cancellation No. 92069700

Probst GmbH

v.

Windy Ridge Corporation

Rebecca Stempien Coyle, Interlocutory Attorney:

This proceeding comes before the Board for consideration of Probst GmbH's (Petitioner) uncontested August 6, 2019, motion to correct the misidentification of Petitioner. Although uncontested, the Board will consider the motion on its merits.

Petitioner's motion seeks to correct the identification of its name, from Probst Handling Equipment GmbH to Probst GmbH. Petitioner asserts that its name is, and has been since before the filing of the petition to cancel, Probst GmbH. Petitioner further alleges that it was misidentified by its prior name, Probst Handling Equipment GmbH, by mistake, and Probst Handling Equipment GmbH is not a different existing legal entity that is not in privity with Probst GmbH. Petitioner further alleges that Probst Handling Equipment GmbH and Probst GmbH are a single, continuing commercial entity. In support, Petitioner provides copies of a

printout from its website stating that “effective at the turn of the 2015/2016 year” it was changing its name to Probst GmbH. (9 TTABVUE 29).¹

When a plaintiff in a Board inter partes proceeding misidentifies itself, and the plaintiff can establish that the misidentification was merely a non-substantive mistake, the Board may allow amendment of the complaint pursuant to Fed. R. Civ. P. 15(a) to correct the misidentification and/or to substitute the proper party in interest. *See Mason Eng’g & Design Corp. v. Mateson Chem. Corp.*, 225 USPQ 956, 957 n.3 (TTAB 1985); *see also* TBMP § 512.04 (June 2019). A mistake by misidentification means a mistake in the form of the plaintiff’s name or its entity type, but “does not encompass the recitation of a different existing legal entity that is not in privity with the party that should have been named.” *Cass Logistics Inc. v. McKesson Corp.*, 27 USPQ2d 1075 (TTAB 1993); *see also* TBMP § 303.05(c).

It is evident that Probst Handling Equipment GmbH was not a different existing legal entity, and the misidentification of Probst GmbH as Probst Handling Equipment GmbH was a non-substantive mistake. Moreover, there is no indication that Respondent will be prejudiced by allowing Petitioner to amend its pleading; indeed Respondent did not contest Petitioner’s request. Accordingly, the motion to change Petitioner’s name to Probst GmbH is **granted**. The Board records have been updated to identify Probst GmbH as Petitioner.

Trial dates **remain as set** in the Board’s order dated June 13, 2019.

¹ Petitioner further provided copies of relevant company registry records in German, as well as English translations. However, the English translations are not signed by the individual making them. *See Luxco, Inc. v. Consejo Regulador del Tequila, A.C.*, 121 USPQ2d 1477, 1507 n. 221 (TTAB 2017). *See also* TBMP § 104