

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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January 29, 2021

Cancellation No. 92073265

Base Product Company, LLC

v.

Paul Howell

**M. Catherine Faint,
Interlocutory Attorney:**

Now before the Board are Respondent's motion (filed September 9, 2020) to amend Registration No. 5267998, the stipulated motion (filed November 13, 2020) to dismiss the cancellation with prejudice, and Petitioner's notice of consent (filed December 22, 2020) to Respondent's motion to amend the registration.

By the proposed amendment, Respondent seeks to amend the dates of first use in International Classes 6 and 8, as follows.

INTERNATIONAL CLASS 6

From:

FIRST USE ANYWHERE DATE: At least as early as 09/07/2016

FIRST USE IN COMMERCE DATE: At least as early as 06/09/2017

To:

FIRST USE ANYWHERE DATE: At least as early as 07/10/2003

FIRST USE IN COMMERCE DATE: At least as early as 07/10/2003

INTERNATIONAL CLASS 8

From:

FIRST USE ANYWHERE DATE At least as early as 09/07/2016

FIRST USE IN COMMERCE DATE At least as early as 06/09/2017

To:

FIRST USE ANYWHERE DATE At least as early as 06/10/2005

FIRST USE IN COMMERCE DATE At least as early as 06/09/2005

The Board notes that the proposed date of first use in commerce in International Class 8 is June 9, 2005, and the proposed date of first use anywhere is June 10, 2005. As set forth in TMEP § 1609.01, “the date of first use in commerce may not be earlier than the date of first use anywhere.” In view of the foregoing, the motion to amend is denied without prejudice.

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** to file a revised motion to amend, failing which the cancellation will be dismissed with prejudice in accordance with the parties’ stipulation of dismissal.