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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Mark D. Baruffi

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Serial No. 78164161

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Mark D. Baruffi, Pro Se

Maria-Victoria Suarez, Trademark Examining Attorney, Law  
Office 102 (Thomas V. Shaw, Managing Attorney).

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Before Seeherman, Hanak and Walters, Administrative  
Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Mark D. Baruffi (applicant) seeks to register in typed drawing form VEGAS BABY for "clothing, namely, shirts, blouses, T-shirts, tank tops, tops, vests, sweaters, dresses, skirts, jumpers, jump suits, rompers, overalls, jackets, boxer shorts, pants, jeans, shorts, leggings, bottoms, sweatshirts, sweat pants, sweat suits, jogging suits, sleep wear, socks, bandannas, swim wear, hats, caps, visors, belts, shoes, sneakers, sandals, and boots." The intent-to-use application was filed on September 18, 2002.

Applicant disclaimed the exclusive right to use VEGAS apart from the mark in its entirety.

The Examining Attorney refused to register the mark "on the grounds that the [current] identification of goods [set forth above] is unacceptable because it exceeds the scope of the identification as it was set forth in the application at the time of filing." (Examining Attorney's brief page 1). When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

Applicant's original identification of goods reads as follows: "T-shirts, headwear, aprons, baby bibs, pull overs, polos, tank tops, all other items in Class 25." In the first Office Action, the Examining Attorney noted that "the wording 'all other items in Class 25' in the identification of goods is unacceptable because it does not specify actual goods. The applicant must delete this wording from the identification."

Thereafter, applicant did indeed delete the wording "all other items in Class 25." However, applicant then added numerous other specific types of goods to its identification of goods which were not included within the specific set of goods set forth in its initial application,

namely, "T-shirts, headwear, aprons, baby bibs, pull overs, polos, tank tops." Just by way of example, applicant's amended identification of goods includes such items as "jackets, pants, jeans, swimwear and bandannas" which clearly were not specifically listed in applicant's original identification of goods. There are numerous other specific types of goods included in applicant's amended identification of goods which were not specifically listed within applicant's original identification of goods.

Trademark Rule 2.71(a) provides as follows: "The applicant may amend the application to clarify or limit, but not to broaden, the identification of goods and/or services." (emphasis added). See also In re Swen Sonic Corp., 21 USPQ2d 1794 (TTAB 1991).

As noted earlier, applicant's original identification of goods included the words "all other items in Class 25." In her brief dated October 19, 2004 the Examining Attorney contends that such wording is impermissible and that specific items cannot be substituted for this broad phrase, citing TMEP Section 1402.02. Prior to April 29, 2005 TMEP Section 1402.02 provided the following example: "For example, if the applicant uses 'all goods in Class 16' along with definite language, the identification of [goods] may only be amended to correct the identification within

the scope of [goods] indicated by the presence of the definite language."

However, effective April 29, 2005 Section 1402.02 was amended to delete this language. Section 1402.02 now reads, in part, as follows: "The Office will not deny a filing date if the applicant uses the language of an international class heading or indicates that the mark is used on all goods or services in a certain class."

Accordingly, it is now permissible to substitute for the broad phrase "all other items in Class 25" specific goods in Class 25. Therefore, applicant's amended identification of goods falls within the scope of the original identification, and is acceptable.

Decision: The refusal to register is reversed.