

UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Mailed: September 9, 2003

Opposition No. 91150584

IN-N-OUT BURGERS

v.

REPIN-SKEES, INC.

**David Mermelstein, Attorney:**

On October 3, 2002, applicant filed an abandonment of its application Serial No. 76/296,778 under Trademark Rule 2.68. On October 7, 2002, opposer filed a motion for judgment. Opposer's motion is uncontested.<sup>1</sup>

Although applicant's abandonment cites Trademark Rule 2.68, the applicable rule is Trademark Rule 2.135, which provides that if, in an *inter partes* proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against the applicant.

Accordingly, because opposer's written consent to the abandonment is not of record, judgment is hereby entered

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<sup>1</sup> For some reason which is not clear, on February 2, 2003, the Board's electronic file system was updated to indicate that this proceeding was terminated. It remained in this status until opposer filed its status request on June 26, 2003. The Board apologizes to the parties for the error, and thanks opposer for calling the matter to our attention.

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against applicant, the opposition is sustained and registration to applicant is refused.

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