

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BFS BRANDS, LLC

and

BRIDGESTONE/FIRESTONE
NORTH AMERICAN TIRE, LLC,

Opposers,

v.

ORTECK INTERNATIONAL INC.,

Applicant.



TTAB

Opposition No. 91154661

Serial No. 76/369,339



03-18-2005

U.S. Patent & TMO/TM Mail Rpt Dt. #74

**OPPOSERS' COMMUNICATION CONCERNING APPLICANT'S
RESPONSE DATED MARCH 14, 2005 AND OPPOSERS' STATEMENT OF ITS
NON-CONSENT TO APPLICANT'S UNILATERAL EXPRESS ABANDONMENT**

In its notice dated February 11, 2005 the Trademark Trial and Appeal Board made reference to applicant's express abandonment of its Application Serial No. 76,369,339 with prejudice and to applicant's statement that its abandonment was in connection with a "letter agreement" executed by the parties. The Board pointed out that, under Trademark Rule 2.135, 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. Applicant was allowed thirty (30) days to provide opposers' written consent, failing which, judgment would be entered against the applicant, the opposition would be sustained and registration to applicant would be refused. Applicant responded in a document dated March 14, 2005 submitting a copy of the letter agreement referenced in its express abandonment.

Opposers state that they have never provided any written consent, within the meaning of Trademark Rule 2.135, to the applicant's unilateral abandonment of its trademark application; and opposers hereby expressly represent that they do not consent thereto.

In this regard, the letter agreement submitted by applicant nowhere addresses the matter of any written consent by the opposers to the abandonment by the applicant of its Application Serial No. 76/369,339 and nowhere indicates that the opposition proceeding may be terminated without the applicant taking judgment against itself, without the sustaining of the opposition and without refusal of registration to applicant. In this regard, the applicant did obligate itself to expressly abandon its application; but the letter states in paragraph 4 that the ". . . express abandonment shall be in a form acceptable to counsel who represents opposers in connection with the opposition proceeding." The express abandonment actually filed was not presented to opposers' counsel before filing; and opposers' counsel does not and would not have approved of any misleading reference in the express abandonment to any "letter agreement," particularly since the letter agreement includes no written consent within the meaning of Trademark Rule 2.135.

For the foregoing reasons, judgment should be entered against the applicant, the opposition should be sustained and registration to the applicant should be refused.

Dated: March 18, 2005

Respectfully submitted,


Peter G. Mack, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of March, 2005, served a true and complete copy of the foregoing OPPOSERS' COMMUNICATION CONCERNING APPLICANT'S RESPONSE DATED MARCH 14, 2005 AND OPPOSERS' STATEMENT OF ITS NON-CONSENT TO APPLICANT'S UNILATERAL EXPRESS ABANDONMENT upon Applicant by mailing a true copy of the same via first-class U.S. Mail, postage prepaid, to Applicant's counsel, addressed as follows:

Deborah J. Westervelt, Esq.
The Law Offices of Royal J. Craig
10 North Calvert Street
Suite 153
Baltimore, Maryland 21202

By: 
Peter G. Mack
FOLEY & LARDNER, LLP