

ESTTA Tracking number: **ESTTA42632**

Filing date: **08/18/2005**

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

Proceeding	91161936
Party	Defendant Saccio, Patricia E. Saccio, Patricia E. 7 Ashley Ave. Park City, UT 84060
Correspondence Address	PHILIP A. MALLINCKRODT MALLINCKRODT & MALLINCKRODT 10 EXCHANGE PLACE, SUITE 510 SALT LAKE CITY, UT 84111
Submission	Motion to Dismiss 2.132
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Date	08/18/2005
Attachments	2-001 motion.pdf (3 pages)

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

IN THE MATTER OF: Application Serial No. 76/532,253
PUBLISHED IN THE OFFICIAL GAZETTE OF May 4, 2004
INTERNATIONAL CLASS: 43

MOOSEHEAD BREWERIES LIMITED	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91161936
	:	
	:	Serial No. 76/532,253
	:	
PATRICIA E. SACCIO and	:	
CHARLES E. SACCIO, Individuals, :	:	
d.b.a. HUNGRY MOOSE	:	MOTION TO DISMISS FOR FAILURE OF OPPOSER TO PROSECUTE
	:	
Applicants.	:	
	:	

Applicants hereby move, pursuant to Rule 37 CFR 2.132(a), to dismiss this opposition proceeding for failure of opposer to prosecute. Opposer's testimony period closed on June 19, 2005. Opposer did not take any testimony nor did it otherwise submit any evidence. Opposer's opposition is based upon alleged ownership by opposer of various U.S. Trademark Registrations which include the word MOOSE or MOOSEHEAD. However, opposer did not enter such registrations into evidence in this matter. Therefore, opposer has no evidence to support its opposition to registration of applicants' different mark which also includes the word MOOSE and cannot prevail in this matter.

While this Motion is not filed prior to the opening of applicants' testimony period, 37 CFR 2.132(c) provides that "the Trademark Trial and Appeal Board may in its discretion grant a

motion under paragraph (a) even if the motion was filed after the opening of the testimony period of the moving party.”

Dated this 18th day of August, 2005.

Respectfully submitted,



Robert R. Mallinckrodt
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Patricia E. Saccio and Charles E. Saccio
d.b.a. Hungry Moose

CERTIFICATE OF SERVICE

Applicants hereby certify that they served on Opposer a true and correct copy of the foregoing Motion to Dismiss for Failure of Opposer to Prosecute this 18th day of August, 2005, by mailing such copy by First Class Mail, postage prepaid, addressed to:

Amanda H. Wilcox
Hahn Loeser & Parks LLP
One GOJO Plaza, Suite 300
Akron, OH 44313-1076



Robert R. Mallinckrodt

gen:client\593 Saccio\motion to dismiss