

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Tdc

Mailed: December 7, 2009

Opposition No. 91171425

Opposition No. 91171426

PPC Marketing, Ltd.

v.

Michael Foods of Delaware,
Inc.

Frances S. Wolfson, Interlocutory Attorney:

On November 4, 2009, applicant filed an abandonment of its application Serial No. 78544615.¹

Additionally, on November 17, 2009, opposer filed a withdrawal of the oppositions without prejudice. Because of the close proximity of the parties' filings, the Board presumes that the separate filings are intended to settle this case. However, it is noted that applicant's abandonment, and opposer's withdrawal, are both without written consent of the adverse party.

¹ Applicant's abandonment failed to show proof of service upon opposing counsel as required by Trademark Rule 2.119(a). Applicant is reminded of its obligation to send a service copy of any paper filed herein to the adverse party, and to include proof of service when the paper is filed with the Board. To expedite matters, a copy of the abandonment of the application is included with this order.

Trademark Rule 2.135 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 applicant.

Moreover, Trademark Rule 2.106(c) provides that after an answer is filed, the opposition may not be withdrawn without prejudice except with the written consent of the applicant.

In view thereof, application Serial No. 78544615 is abandoned with prejudice and opposition Nos. 91171425 and 91171426 are dismissed with prejudice.

Applicant is allowed until THIRTY DAYS from the mailing date of the instant order in which to advise the Board how it wishes to proceed with its asserted counterclaims, failing which the Board will resume proceedings herein with respect to the counterclaim and reset dates accordingly.

Proceedings otherwise remain suspended.