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

jh/Winter

Mailed: August 8, 2007

Opposition No. 91174116

Bausch & Lomb Incorporated

v.

Skin Food Pty Ltd.

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

This case comes up for consideration of applicant's motions (filed July 2, 2007) "to amend" its application Serial No. 78563005 and to grant "summary judgment dismissal" of this proceeding in its favor. The Board notes that opposer has not filed a brief in response to applicant's motions.

By the proposed amendment, applicant seeks to delete the identification of goods in Class 5 in its entirety.[1] The amendment to Class 5 is clearly limiting in nature as required by Trademark Rule 2.71(a), 37 C.F.R. § 2.71(a).

However, an amendment to delete an entire class of goods from an application operates as an abandonment of the application as to that class. *See* Trademark Rule 2.135; 37 C.F.R. § 2.135; and TBMP §602.01 (2d ed. rev. 2004).

[1] Opposer did not oppose the identification of goods in Class 3, which remains unchanged.

Trademark Rule 2.135 provides that if, in an *inter partes* proceeding, an applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant, and registration will be refused. In the alternative, should applicant provide opposer's ***written consent*** to the abandonment, the opposition may be dismissed without prejudice.[2] *Id.*

Applicant has not provided opposer's written consent to the abandonment of the goods in International Class 5. However, the Board notes that the parties appear to be engaged in settlement discussions. Accordingly, applicant is allowed **THIRTY DAYS** from the date of this order to provide opposer's written consent to the abandonment of Class 5, failing which judgment will be entered against applicant in connection with the goods in International Class 5, the opposition will be sustained, and registration to applicant in connection with the goods in International Class 5 will be refused.[3] *Id.*

Proceedings are otherwise SUSPENDED.

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[2] Trademark Rule 2.135, 37 C.F.R. § 2.135 is operative in this case. Consequently, applicant's "motion for summary judgment" will not be given any consideration. Applicant is reminded that the Federal Rules of Civil Procedure apply to Board proceedings to the extent that there is not an applicable Trademark Rule. TBMP §101.02 (2d ed. rev. 2004).

[3] Even if the opposition is sustained as to the goods in International Class 5, the application may proceed to registration in connection with the goods in International Class 3, which are not opposed.