

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

Mailed: November 19, 2010

Opposition No. 91195691

Times Three Clothier, Inc.

v.

Crosscare Limited

**Robert H. Coggins,
Interlocutory Attorney:**

On September 3, 2010, applicant filed a proposed amendment to its application Serial No. 77905299, without an allegation of opposer's written consent; and on October 18, 2010, opposer filed a withdrawal, without prejudice, of the opposition.

By the proposed amendment, applicant seeks to change the identification of goods in International Class 5 **from:**

Skin creams for medical use containing plant extracts enriched with vitamins;

to:

Skin creams for medical use containing plant extracts enriched with vitamins, sold at pharmacies and health care sections of grocery stores.

While the amendment is clearly limiting in nature as required by Trademark Rule 2.71(a), it was filed without the

consent of opposer. The Board generally defers determination of a timely filed unconsented motion to amend in substance until final decision or until the case is decided upon summary judgment. See *Space Base Inc. v. Stadis Corp.*, 17 USPQ2d 1216 (TTAB 1990) (motion to amend identification of goods deferred).

Opposer's later-filed (October 18, 2010) withdrawal of the opposition makes no reference to the amendment. In view thereof, the Board will not construe the withdrawal as contingent upon the amendment or as providing opposer's consent to the amendment.

Accordingly, consideration of the amendment and withdrawal are deferred until the parties clarify whether (1) opposer consents to the amendment, and (2) opposer's withdrawal is contingent upon the amendment.

The parties are allowed until **thirty days** from the mailing date of this order in which to state whether opposer consents to the amendment and whether opposer's withdrawal is contingent upon the amendment.

Proceedings are suspended retroactively to the date the amendment was filed (i.e., September 3, 2010).