

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

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Mailed: June 20, 2013

Opposition No. 91202219

Eat Right Foods Ltd.

v.

Kevin Leville

On April 8, 2013, applicant filed an abandonment of its application Serial No. 77868068.¹ Additionally, on April 18, 2013, opposer filed a withdrawal of opposition.

It has come to the Board's attention that on May 17, 2013, the opposition was dismissed without prejudice and Serial No. 77868068 was abandoned with respect to International Classes 5, 29, and 30 only, when in fact it should have been abandoned in its entirety. The error is regretted.

¹ Applicant's abandonment did not include 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 in an inter partes proceeding 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 can be viewed at:
<http://ttabvue.uspto.gov/ttabvue/v?pno=91202219&pty=OPP&eno=75>

The Board also notes that applicant's abandonment was without opposer's written consent. 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.

In view thereof, the Board's May 17, 2013 order is hereby vacated and because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant, the opposition is sustained and registration to applicant is refused.

***By the Trademark Trial
and Appeal Board***