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

Proceeding	91225355
Party	Plaintiff Energizer Brands, LLC
Correspondence Address	JOHN GARY MAYNARD III HUNTON & WILLIAMS LLP 951 EAST BYRD STREET, RIVERFRONT PLAZA RICHMOND, VA 23219-4074 UNITED STATES HWITM@hunton.com
Submission	Motion for Summary Judgment
Filer's Name	John Gary Maynard, III
Filer's e-mail	HWITM@hunton.com, jgmaynard@hunton.com, mnigriny@hunton.com, jkalb@hunton.com
Signature	/John Gary Maynard, III/
Date	05/23/2016
Attachments	Energizer Brands v. Batteroo - Opp. 91225355 - Motion for Judgment.pdf(125907 bytes)

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

In the matter of Application Serial No. 86/571,275
Published in the *Official Gazette* on August 18, 2015
Mark: BATTERISER

In the matter of Application Serial No. 86/571,464
Published in the *Official Gazette* on August 18, 2015
Mark: BATTERISE

_____)	
Energizer Brands, LLC,)	
)	
Opposer,)	Opposition No. 91225355
)	
)	
v.)	
)	
Batteroo, Inc.)	
)	
Applicant.)	
_____)	

MOTION FOR JUDGMENT ON THE MERITS UNDER 37 CFR 2.135

Energizer Brands, LLC (“Opposer”), files this Motion for Judgment on the Merits Under 37 CFR 2.135 in response to Batteroo, Inc.’s (“Applicant”) Request for Express Abandonment of Application dated May 20, 2016.

I. Background

On March 20, 2015, Applicant filed trademark applications for BATTERISER and BATTERISE, as shown in Application Serial Nos. 86/571,275 and 86/571,464 respectively, for a “sleeve to be used with disposable batteries to extract stored energy and extend battery life.” (“BATTERISER and BATTERISE Applications”) These applications were published for

opposition on August 18, 2015. Opposer filed an opposition against the BATTERISER and BATTERISE Applications on December 12, 2015, and Applicant answered on January 21, 2016. After settlement negotiations fell through, on May 17, 2016, Applicant informed Opposer that it had decided to simply abandon the subject trademark applications without entering into a settlement agreement. On May 19, 2016, Opposer notified Applicant that it intended to continue the opposition absent a settlement agreement. The next day, May 20, 2016, Applicant filed its Request for Express Abandonment of Application, and requested that the Opposition be dismissed. Opposer never consented to the abandonment.

II. Legal Standard and Argument

“An applicant may expressly abandon an application by filing a written request for abandonment or withdrawal of the application, signed by the applicant, someone with legal authority to bind the applicant” 37 CFR § 2.68; TBMP §602.01. “After the commencement of an opposition, concurrent use, or interference proceeding, if the applicant files a written abandonment of the application or of the mark without the written consent of every adverse party to the proceeding, *judgment shall be entered against the applicant.*” 37 CFR § 2.135 (emphasis added); *see also* TBMP §602.01.

Here, Applicant expressly abandoned the BATTERISER and BATTERISE Applications approximately 6 months after initiation of an opposition proceeding on both applications. Opposer never consented in writing, or otherwise, to the abandonment. As a result, Opposer respectfully requests pursuant to 37 CFR § 2.135 that the Board enter a judgment in its favor in

Opposition No. 91225355. Applicant's request that the opposition be dismissed as a result of the abandonment is improper and should be denied.

Dated: May 23, 2016

Respectfully submitted,

By: /s/ John Gary Maynard, III

John Gary Maynard, III
Joshua M. Kalb
Matthew Nigriny
Hunton & Williams LLP
951 East Byrd Street
Riverfront Plaza, East Tower
Richmond, VA 23219-4074
Telephone (804)788-8200

*Attorneys for Opposer,
Energizer Brands, LLC*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION FOR JUDGMENT ON THE MERITS UNDER 37 CFR 2.135 has been properly served upon the correspondent of record, via email, on this 23rd day of May, 2016.

Pardees Parvin
Batteroo, Inc.
310 De Guigne Road
Sunnyvale, CA 94085

/s/ John Gary Maynard, III
John Gary Maynard, III