

TTAB



01-05-2004

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

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

In the Matter of Registration Application No. 76/378,147

SARA LEE/DE N.V.,

Opposer,

v.

SATELLITE COFFEE & TOYS, INC.,

Applicant.

Opposition No. 91155738

**MOTION, UNDER TBMP § 502.03 AND 37 CFR §2.120(g), TO DISMISS
NOTICE OF OPPOSITION
AS SANCTION FOR FAILURE TO COMPLY WITH DISCOVERY**

BCX TTAB
NO FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Applicant, Satellite Coffee & Toys, Inc., by and through its undersigned counsel, respectfully requests pursuant to 37 CFR § 2.120(g) that the Board issue an order dismissing the Notice of Opposition, with prejudice, as an appropriate sanction for failure to respond to legitimate discovery requests. In support of this Motion, Applicant states as follows:

1. On October 13, 2003, Applicant served, by first class mail, certified with return receipt requested, Applicant's First Set of Interrogatories.

2. On October 13, 2003, Applicant served, by first class mail, certified with return receipt requested, Applicant's First Set of Requests for Production of Documents.

3. According to the U.S. Postal Service return receipt, counsel for Opposer received Applicant's discovery requests no later than October 16, 2003.

4. Opposer's responses to Applicant's discovery requests were due to be served no later than November 17, 2003.

5. As of December 31, 2003, counsel for Applicant has not received any responses whatsoever to Applicant's discovery requests -- neither the interrogatories nor the requests for production.

6. Applicant has inquired, both by letter and by telephone message, concerning the status of Opposer's discovery responses. Applicant sent to Opposer a letter on November 11, 2003, inquiring about the ongoing discovery; no response was received. Counsel for Applicant telephoned counsel for Opposer on about November 10 and on November 21, 2003, and left detailed voice mail messages seeking to discuss discovery. Counsel for Applicant has received no response thereto.

7. Applicant filed a timely and competent Motion to Compel Responses, and served said motion by first-class mail on December 1, 2003. Accordingly, Opposer's brief in response to Applicant's motion to compel was due to be filed and served on December 22, 2003.

8. As of December 31, 2003, Applicant has not received any brief in opposition to the motion to compel. Opposer's brief in opposition is significantly overdue without permission or excuse. Counsel for Applicant has received no communications from Opposer.

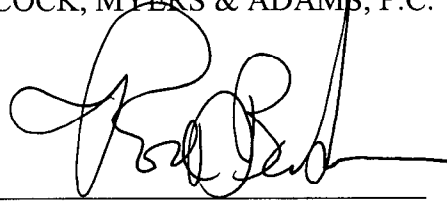
9. It is plainly manifest that Opposer has abandoned this opposition.

WHEREFORE, Applicant respectfully requests that the Board grant this Motion by issuing an order dismissing the Notice of Opposition with prejudice, and passing the application to registration..

No fee is believed to be due in connection with the filing of this document. However, should any fee under 37 CFR § 2.6 be deemed necessary for any reason relating to this application, the Commissioner is hereby authorized to deduct said fee from Deposit Account No. 13-4213. Please reference our Docket No. 31213.

Respectfully submitted,
PEACOCK, MYERS & ADAMS, P.C.

Date: December 31, 2003

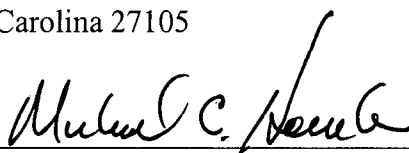
By: 
Rod D. Baker, Reg. No. 35,434

Attorneys for Applicant
P.O. Box 26927
Albuquerque, New Mexico 87125-6927
Phone: (505) 998-1504
Fax: (505) 243-2542

CERTIFICATE OF SERVICE

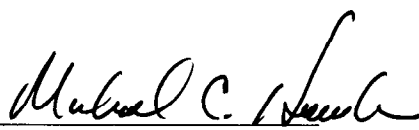
I hereby certify that a true and correct copy of the foregoing Motion was served upon Opposer's attorney, by depositing a copy of the same in the United States mail, postage prepaid, on this 31st day of December, 2003, addressed to:

Bruce O. Bradford
Sara Lee Corporation
1000 East Hanes Mill Road
Winston-Salem, North Carolina 27105


Michael Houck

CERTIFICATE OF MAILING

This certifies that the foregoing MOTION TO DISMISS NOTICE OF OPPOSITION AS SANCTION FOR FAILURE TO COMPLY WITH DISCOVERY is being deposited with the United States Postal Service as first class mail service, postage prepaid, under 37 CFR 1.8 on this 31st day of December, 2003 and is addressed to Box TTAB, No Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.


Michael Houck