

ESTTA Tracking number: **ESTTA115878**

Filing date: **12/20/2006**

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

Proceeding	91163307
Party	Plaintiff Samar, L.L.C. Samar, L.L.C. 10 South Riverside Plaza Chicago, IL 60606
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Attachments	saralee.oppreplydismisscounterclaim.pdf (3 pages)(142030 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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SARAMAR, LLC and SARA LEE CORP.,)	
)	
Opposers,)	Opposition No.: 91163307
)	Mark: X SCENT [and design]
v.)	
)	Opposition No.: 91163331
ARCTICSHIELD, INC.,)	Mark: X SCENT
)	
Applicant.)	

**OPPOSERS' REPLY IN SUPPORT OF THEIR
MOTION TO DISMISS APPLICANT'S COUNTERCLAIM**

In its Response to Opposers' Motion to Dismiss Applicant's Counterclaim, Applicant boldly ignores the single most salient fact – namely, that Opposers have a valid, subsisting trademark registration that is accorded a priority date of February 21, 2002, which indisputably is prior to Applicant's filing date and prior to Applicant's alleged date of first use. The unintentional abandonment and subsequent revival of Opposers' application has no bearing on this fact. *See* 37 C.F.R. § 2.66; TMEP § 1208.01(d). Applicant's assertion that it somehow has priority is simply frivolous, and Applicant has alleged nothing in its Counterclaim to support such an assertion. Even if every allegation in Applicant's Counterclaim is taken as true, Applicant still cannot prevail. Accordingly, Applicant's Counterclaim must be dismissed. *See, e.g., Zirco Corp. v. American Telephone and Telegraph Co.*, 21 USPQ2d 1542, 1544 (TTAB 1991).¹

¹ Opposers also reiterate that Applicant has not alleged a likelihood of confusion between its marks and Opposers' mark to support its Counterclaim. In fact, Applicant expressly denied such a likelihood of confusion in its Answer. *See* Applicant's Answer to Amended Notice of Opposition at ¶¶ 6-8.

Respectfully submitted,

Dated: December 20, 2006

/s/ Joshua S. Bish

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he or she has caused a true and correct copy of the foregoing OPPOSERS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS APPLICANT'S COUNTERCLAIM to be served on the following counsel for Applicant via First Class U.S. Mail this 20th day of December, 2006:

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