

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

tlc/ah/em/CBG

Mailed: July 15, 2009

Opposition No. 91163836

SMARTPOOLS INC.

v.

GREEN ENERGY INC.

Opposition Dismissed

In view of the stipulation filed June 10, 2009, the opposition is dismissed without prejudice. See Trademark Rule 2.106(c).

Counterclaim

It is noted that the stipulation did not refer to the outstanding counterclaim for cancellation of opposer's Registration No. 2731607. In a situation such as this, where the parties stipulated to the disposition of the claim against which the counterclaim was brought prior to the determination of the counterclaim, the counterclaim will nevertheless proceed unless the parties stipulate to its disposition, or it is withdrawn by the counterclaimant, or one party consents to entry of judgment against itself on the counterclaim, etc. See, e.g., Syntex (U.S.A.) Inc. v.

E.R. Squibb & Sons Inc., 14 USPT2d 1879, 1880 (TTAB 199) (opposition dismissed with prejudice; applicant elected to go forward with counterclaim to cancel opposer's registration and had standing to do so). See also TBMP § 606 (2nd ed. rev. 2004).

In view thereof, Green Energy Inc. is allowed until **thirty days** from the mailing date of this order to file a withdrawal of its counterclaim, or otherwise indicate how it wishes to dispose of the counterclaim, failing which the counterclaim will go forward and dates will be reset.

Proceedings are suspended pending applicant's response.¹

*By the Trademark Trial
and Appeal Board*

¹ Opposer's stipulation filed June 10, 2009 fails to indicate proof of service on applicant, as required by Trademark Rule 2.119. In order to expedite this matter, a copy of the stipulation is forwarded herewith to applicant's counsel.