

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

WINTER/am

Mailed: September 25, 2014

Opposition No. 91213000

Tootsie Roll Industries, LLC

v.

FluffPop Inc.

By the Trademark Trial and Appeal Board:

Registrant's withdrawal (filed August 14, 2014) of its counterclaim, is noted. Because no answer is of record, registrant's counterclaim is dismissed without prejudice. *See* Trademark Rule 2.114(c).

On August 18, 2014, applicant filed a proposed amendment to its application Serial No. 85833228, with an allegation of opposer's consent.

By the proposed amendment, applicant seeks to amend the involved application to delete the Class 30 goods in its entirety. In an opposition to an application having multiple classes, a request to delete an opposed class is, in effect, an abandonment of the application with respect to that class and is governed by Trademark Rule 2.135. TBMP § 605.03(b).

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. However,

inasmuch as applicant has stated that the abandonment was with opposer's consent, the Board will allow applicant an opportunity to submit opposer's written consent.

In view thereof, applicant is allowed until thirty days from the mailing date of this order in which to submit opposer's written consent¹ to the abandonment, failing which judgment will be entered against applicant, and the opposition will be sustained *only* as to the goods in International Class 30 in Serial No. 85833228.

If the amendment resolves this proceeding, opposer is allowed until the same thirty days from the mailing date of this order to file a withdrawal of the opposition, failing which the opposition will go forward on the application as amended. *See* Trademark Rule 2.106(c).

Proceedings are otherwise **SUSPENDED**.



¹ Applicant may either submit the portion of the parties' settlement agreement which shows that Opposer agrees that Applicant will delete the goods in International Class 30, or opposer's separate written consent to that amendment to the subject application.