

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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mc/gcp

Mailed: May 19, 2014

Opposition No. 91214095

Fresh Express Incorporated

v.

Happy's Pizza Company

**By the Trademark Trial and Appeal Board:**

On April 17, 2014, applicant filed a proposed amendment to its application Serial No. 85880368, with opposer's consent, and opposer's withdrawal with prejudice of the opposition, contingent upon entry of the amendment.

By the proposed amendment applicant seeks to delete the identification of services in its entirety in *International Class 35*, such that only the services in International Class 43 remain in the application.

In an opposition to an application having multiple classes, as is the case here, if the applicant files a request to amend the application to delete an opposed class, the request for amendment is, in effect, an abandonment of the application with respect to that class, and is governed by Trademark Rule 2.135.

Inasmuch as the amendment is clearly limiting in nature as required by Trademark Rule 2.71(a), and because opposer consents thereto, the amendment is approved and entered. *See* Trademark Rule 2.133(a).

Accordingly, application Serial No. 85880368 stands abandoned with respect to International Class 35.

The contingency in opposer's withdrawal having now been met, the opposition is dismissed in with prejudice.

Application Serial No. 85880368 will proceed to issuance of a notice of allowance only in regard to the services identified in International Class 43, namely, restaurant services.