

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

Nmt/wbc

Mailed: January 4, 2018

Opposition No. 91237373

*Shamrock Foods Company*

*v.*

*Brick & Mortar Distribution, LLC*

**Wendy Boldt Cohen, Interlocutory Attorney:**

On December 19, 2017, Applicant filed a proposed amendment to its application Serial No. 87285671, with Opposer's consent.

By the proposed amendment, Applicant seeks to amend the identification of goods in International Class 005 **from** "Dietary and nutritional supplements" **to** "Dietary and nutritional supplements, except ready to drink beverages."

Inasmuch as the amendment is 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).

Furthermore, Applicant seeks to delete, in its entirety, the goods identified in International Class 32, i.e., one of the two classes of goods that are subject to the instant opposition.

In an opposition to an application having multiple classes, 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. *See* TBMP §602.01. Trademark Rule 2.135 provides as follows:

After the commencement of an opposition, concurrent use, or interference proceeding, if the applicant files a written abandonment of the application or of the mark without the written consent of every adverse party to the proceeding, judgment shall be entered against the applicant. The written consent of an adverse party may be signed by the adverse party or by the adverse party's attorney or other authorized representative.

Inasmuch as Opposer's consent is noted but Opposer's *written* consent<sup>1</sup> to the abandonment of Class 32 goods is not of record, Applicant is allowed **thirty days** from the mailing date of this order to submit Opposer's written consent, failing which judgment will be entered against Applicant with regard to the goods in Class 32.

Further, if these amendments resolve this proceeding, Opposer is allowed until **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.

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<sup>1</sup> Only Applicant's counsel signed the motion to amend.