

TTAB

SCHULTE ROTH & ZABEL LLP

919 Third Avenue
New York, NY 10022
(212) 756-2000
fax (212) 593-5955

www.srz.com

Writer's Direct Number
(212) 610-2388

Writer's E-mail Address
daniel.angel@srz.com

May 20, 2005

VIA EXPRESS MAIL

Commissioner for Trademarks
ATTN: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Re: CM MANAGEMENT, INC., Applicant v. SKYLARK SPORT
MARKETING, CORPORATION, Opposer.
Mark: PRANA
Application No.: 78/265,186
Our Reference No.: 015402-0017

Dear Sir or Madam:

Enclosed is a Petition to Vacate "Dismissal with Prejudice" and Enter "Dismissal without Prejudice" for the above-referenced matter.

Please deduct \$100.00 and any deficiencies therein, from Schulte Roth & Zabel LLP's Deposit Account No. 500675, **Order No. 015402/0017**. A duplicate copy of this transmittal letter is enclosed for this purpose.

Also enclosed is a self-addressed prepaid postcard, which we request that you date stamp and return to us to acknowledge your receipt of this filing.

Very truly yours,



Daniel Angel

Enclosures

cc: Scott Kareff, Esq. (w/o enclosure)
File

EVO06676015US

9880592.1



05-23-2005

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

In the Matter of Trademark Application No. 78/265,186
For PRANA
Filed on June 6, 2003

CM MANAGEMENT, INC.,	x	
	:	OPPOSITION NO.: 91162025
	:	
Applicant,	:	
	:	
v.	:	
	:	
SKYLARK SPORT MARKETING	:	
CORPORATION,	:	
	:	
Opposer.	:	
	x	

**PETITION TO VACATE "DISMISSAL WITH PREJUDICE"
AND ENTER "DISMISSAL WITHOUT PREJUDICE"**

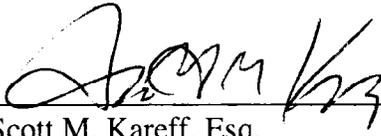
Pursuant to 37 CFR § 2.135, CM Management, Inc. ("Applicant"), by and through its undersigned attorney, expressly abandoned the above-referenced trademark application with the consent of Opposer on January 1, 2005. Subsequently, the Trademark Trial and Appeal Board dismissed the opposition with prejudice on May 11, 2005.

Representative for, and President of, Skylark Sport Marketing Corporation ("Opposer"), Mr. Jeffrey Theodosakis, in that certain Trademark Settlement Agreement, dated December 1, 2004, between Opposer and Applicant (the "Agreement") agreed and consented to this express abandonment in Section 1.b of the Agreement. Attachment A contains relevant portions of the Agreement setting forth Opposer's consent.

As Opposer consented to the express abandonment of Applicant's application and Opposer was the sole adverse party to this proceeding, Applicant respectfully requests that the Trademark Trial and Appeal Board: (i) vacate its order dated May 11, 2005 dismissing the opposition "with prejudice"; and (ii) enter judgment dismissing the opposition "without prejudice".

Respectfully submitted,

Dated: May 19, 2005

By  _____
Scott M. Kareff, Esq.
Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
(212) 756-2132

*Attorney for Petitioner
CM Management, Inc*

ATTACHMENT A

EXECUTION VERSION

TRADEMARK SETTLEMENT AGREEMENT

THIS TRADEMARK SETTLEMENT AGREEMENT (the "Agreement") is effective as of December 1, 2004 (the "Effective Date") and is by and between SKYLARK SPORT MARKETING CORPORATION, a California corporation with its principal place of business located at 3275 Corporate View, Vista, California 92081 ("Skylark"), on the one hand, and CMM MANAGEMENT, INC., a Delaware corporation with its principal place of business located at 161 Benbro Drive, Buffalo, New York 14225 ("CMM"), on the other hand. Skylark and CMM are sometimes referred to herein collectively as the "Parties".

WHEREAS, CMM is the owner of the applications in the United States Patent and Trademark Office ("PTO") set forth on Exhibit 1 attached hereto (such PTO applications referred to herein as "CMM's Applications"), including without limitation Application Serial Nos. 78 498,745 and 78 498,746 for the mark PRANASLEEP (one word) ("CMM's PRANASLEEP Applications");

WHEREAS, Skylark is the owner of numerous registrations and applications for the mark PRANA in countries all around the world, including without limitation the registrations in the PTO for the PRANA mark set forth on Exhibit 2 attached hereto (such PTO registrations referred to herein as "Skylark's PTO Registrations");

WHEREAS, by letter dated February 12, 2004 Skylark demanded, among other things, that CMM withdraw its then-pending PTO applications for the PRANA Mark;

WHEREAS, by letter dated March 9, 2004 CMM, among other things, denied the allegations contained in Skylark's February 12 letter;

WHEREAS, the PTO has published some of CMM's Applications, as indicated on Exhibit 3;

WHEREAS, Skylark has opposed registration of CMM's Applications which have been published by instituting Opposition Nos. 91-152,025 and 91-162,026 (the "Opposition Proceedings"), which opposition proceedings are currently pending before the Trademark Trial and Appeal Board ("TTAB");

WHEREAS, CMM denies any wrongdoing and denies that there is any likelihood of confusion resulting from the Parties' use of their respective marks, particularly after giving effect to this Agreement;

WHEREAS, Skylark and CMM agree that after compliance with and giving effect to this Agreement, there is no likelihood of confusion resulting from the Parties' use of their respective marks; and

WHEREAS, CMM and Skylark, in order to avoid the expense, inconvenience and disruption to their businesses of pursuing and defending litigation between them, wish to enter into this Agreement to resolve their dispute concerning their marks amicably;

NOW THEREFORE, in consideration of the premises and mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CMM and Skylark hereby agree as follows:

1. Suspension, Re-instatement and Termination of the Opposition Proceedings.

a. Suspension and Re-instatement.

REDACTED

b. Termination. Skylark hereby consents to CMM's abandonment of the applications which are the subject of the Opposition Proceedings ("CMM's PRANA Applications"). In each case, without prejudice, and CMM agrees that, no later than 15 days after the PTO has approved CMM's PRANASLEEP Applications for publication, if ever, CMM will file with the PTO a notice of express abandonment (with copies given by notice to Skylark) of CMM's PRANA Applications without prejudice, indicating thereon that such filings are being made with the consent of Skylark, which will result in the TTAB's dismissal of the Opposition Proceedings without prejudice. The Parties acknowledge and agree that (i) nothing herein shall require CMM to abandon CMM's PRANA Applications (or any other of its applications) in the event that the PTO finally decides not to approve CMM's PRANASLEEP Applications for publication; and (ii) notwithstanding anything to the contrary herein, in the event that the PTO finally decides not to approve CMM's PRANASLEEP Applications for publication, neither Party shall be bound by its obligations, consents or restrictions set forth in this Agreement.

c. Amendments to CMM's PRANASLEEP Applications.

REDACTED

d. Copies of Correspondence to and from the PTO.

REDACTED

2. CMM's Use of the PRANA Mark.

REDACTED

a. PRANA SLEEP Applications.

REDACTED

b. PRANAYAMA Application.

REDACTED

c. No Other "PRANA" Applications.

REDACTED

3. CMM's Use of the PRANASLEEP Mark

REDACTED

6. CMM's Advertising

a.

REDACTED

b.

REDACTED

c.

REDACTED

d.

REDACTED

c. **REDACTED**

f. **REDACTED**

g. **REDACTED**

h. **REDACTED**

7. CMIM's Consent.
REDACTED

8. Skylark's Consent.
REDACTED

9. No Trademark Use of "Prana" and "Sleep"

a.

REDACTED

b.

REDACTED

Services

10. No Use or Registration of PRANA in Connection with CMM'S Goods and

REDACTED

11. Geographic Scope

REDACTED

12. Further Assurances

REDACTED

13. Cooperation to Prevent or Dispel Confusion.

REDACTED

14. Term and Assignment of Trademark Rights.

REDACTED

15 General Release.

REDACTED

16 Notices

REDACTED

17. Breach and Termination

REDACTED

18. Savings Clause

REDACTED

19. Entire Agreement

REDACTED

20. Headings. **REDACTED**

21. No Waiver. **REDACTED**

22. Bound Parties. **REDACTED**

23. Assignment. **REDACTED**

24. Governing Law. **REDACTED**

25. Facsimile Counterparts. This Agreement may be signed in one or more facsimile counterparts, each of which shall be an original and all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each party and received by the other party.

26. Acknowledgement. **REDACTED**

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto caused this Agreement to be duly executed and delivered by their respective authorized officers as of the Effective Date.

CM MANAGEMENT, INC.

SKYLARK SPORT MARKETING
CORPORATION



By: Stephen J. Schiller

By: Jeffrey Theodosakis

Its: President

Its: President

IN WITNESS WHEREOF, the Parties hereto caused this Agreement to be duly executed and delivered by their respective authorized officers as of the Effective Date.

CM MANAGEMENT, INC.

SKYLARK SPORT MARKETING
CORPORATION



By: Stephen J. Schiller

Its: President

By: Jeffrey Theodosakis

Its: President

Exhibit I

CMM's Applications

Mark	Serial No.	Filing Date	Status	Goods/Services
PRANA	78 265,189	6/30/2003	published for opposition and opposed	Retail store services in the field of bedding, mattresses, box springs, foundations and other bedding related items in Class 35
PRANA	78 265,186	6/20/2003	published for opposition and opposed	Bedding, namely, mattresses, box springs and foundations in Class 20

REDACTED

REDACTED

Exhibit 2

Skylark's PTO Registrations

Mark	Reg. No.	Goods/Services
PRANA	1,867,298	adult and children's biking, hiking, and climbing clothing; namely, shorts, T-shirts, sweatshirts, hats, tank tops, and trousers in Class 25
PRANA	2,569,537	Yoga clothing, namely, shorts, pants, tops, hats, headbands and eye covers for use in yoga practice in Class 25
PRANA & Design	2,639,255	adult and children's biking, hiking, climbing, and yoga clothing, namely shorts, T-shirts, sweatshirts, hats, tank tops, sweaters, jackets, trousers, eye covers for use in yoga practice, headbands, and sports bras in Class 25
PRANA	2,677,150	climbing accessories, namely chalk bags, backpacks, and tote bags in Class 18. yoga exercise accessories, namely rugs and rug holders in Class 27. yoga exercise mats in Class 28

Exhibit 3

Approved PRANASLEEP Logo

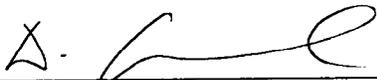
REDACTED

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2005, I caused true and correct copies of Applicant's PETITION TO VACATE DISMISSAL WITH PREJUDICE AND ENTER DISMISSAL WITHOUT PREJUDICE to be served by facsimile and first class mail upon:

Kit M. Stetina
Stetina Brunda Garred & Brucker
75 Enterprise, Suite 250
Aliso Viejo, California 92656

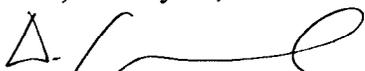
Attorney for Opposer
Skylark Sport Marketing Corporation



Daniel Angel

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing PETITION TO VACATE DISMISSAL WITH PREJUDICE AND ENTER DISMISSAL WITHOUT PREJUDICE is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service in an envelope addressed to the United States Patent and Trademark Office, Trademark Trial and Appeal Board, P. O. Box 1451, Alexandria, VA 22313-1451, on May 20, 2005.



Daniel Angel