

LITCHFIELD  
Attorneys at Law CAVO LLP

WRITER'S ADDRESS:  
5201 W. Kennedy Blvd.  
Suite 450  
Tampa, FL 33609  
(813) 579-9788  
(813) 289-0692 (fax)

Stacey L. Papp  
Email: [papp@litchfieldcavo.com](mailto:papp@litchfieldcavo.com)

TTAB

January 24, 2007

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

Re: *Becker Designs, Inc. v. Biker Design, Inc.*  
**Opposition Number 91168610**  
Application Number 78512395

To Whom It May Concern:

Enclosed for filing in the above-referenced Opposition proceeding, please find Defendant Biker Design, Inc.'s *Supplement to Petition to Disqualify Counsel*.

Should you have any questions regarding this matter, please contact me at 813-579-7988. Thank you for your attention to this matter.

Very truly yours,



Stacey L. Papp

Enclosure

cc: Bruce Hanna, Esq.

02-02-2007

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UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

BECKER DESIGNS, INC.,

Plaintiff,

Opposition No. 91168610  
Application No. 78512395

v.

BIKER DESIGN, INC.

Defendant.

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SUPPLEMENT TO PETITION TO DISQUALIFY COUNSEL

DEFENDANT, BIKER DESIGN, INC., hereby supplements its Petition to Disqualify Counsel as follows:

On January 23, 2007, the Defendant filed a Petition to Disqualify counsel for Becker Designs based upon a conflict of interest. The Petition stated that a magistrate judge had disqualified Becker Designs' counsel (Kathryn Weston and Cobb & Cole) in a federal court case brought by Becker Designs against Biker Design for, among other things, trademark infringement. *Becker Designs, Inc. v. Biker Design, Inc. et al.*, Case No. 6:06-cv-56 (M.D. Fla.). Becker Design filed an objection to the magistrate's order and the disqualification motion was being reviewed *de novo* by the district court judge assigned to the case. At approximately 8:15 p.m. on January 23, the United States District Court for the Middle District of Florida **AFFIRMED** the magistrate's Order disqualifying Plaintiff's counsel, Kathryn Weston and Cobb & Cole. See Order, attached hereto as Exhibit 1.

Biker Design respectfully requests the Board disqualify Kathryn Weston and Cobb & Cole from representing Becker Designs in this Opposition.

Respectfully submitted,

  
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Lisa A. Oonk

Florida Bar No. 0006238

Stacey L. Papp

Virginia Bar No. 47258

LITCHFIELD CAVO, LLP

5201 W. Kennedy Blvd., Suite 450

Tampa, Florida 33609

Voice: 813.289.0690

Fax: 813.289.0692

Email: oonk@litchfieldcavo.com,

papp@litchfieldcavo.com

### CERTIFICATE OF MAILING

I HEREBY certify that the foregoing Supplement to Petition to Disqualify Counsel was deposited with the United States Postal Service with sufficient postage as First-class mail in an envelope addressed to:

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

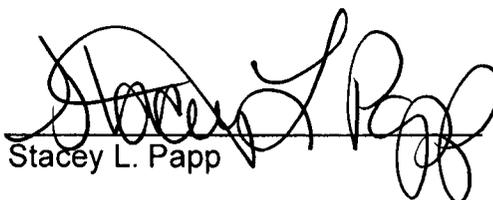
on January 24, 2007

  
\_\_\_\_\_  
Stacey L. Papp

### CERTIFICATE OF SERVICE

I HEREBY certify that on January 24, 2007, I served a copy of the foregoing Petition to Disqualify Counsel by first class mail, postage prepaid on the following counsel for Plaintiff:

Bruce A. Hanna, Esq.  
Kathryn Weston, Esq.  
COBB & COLE  
150 Magnolia Avenue, Post Office Box 2491  
Daytona Beach, FL 32115-2491  
Attorneys for Plaintiff

  
\_\_\_\_\_  
Stacey L. Papp

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**BECKER DESIGNS, INC.,**

**Plaintiff,**

**-vs-**

**Case No. 6:06-cv-56-Orl-22DAB**

**BIKER DESIGN, INC.; ERGUN RECEL; and  
NIR GIIST,**

**Defendants/Third-Party  
Plaintiffs,**

**-vs-**

**ROBERT BECKER and SUSAN BECKER,**

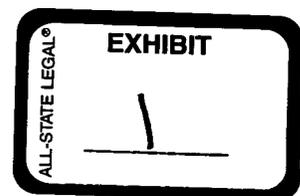
**Third-Party Defendants.**

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**ORDER**

This cause comes before the Court for consideration of Plaintiff Becker Designs, Inc.'s Objections to Magistrate's Order on Defendant's Motion for Disqualification of Counsel for the Plaintiff (Doc. 58).

On October 13, 2006, Defendants filed a Motion to Disqualify Counsel (Doc. 47). Magistrate Judge Baker granted that motion by means of an Order (Doc. 57) dated December 13, 2006. Therein, Judge Baker concluded that Plaintiff's counsel, Kathryn Weston, and her law firm were disqualified from representing Plaintiff in this case based on Ms. Weston's prior representation of Defendant Biker Design, Inc. ("Biker") while she was employed with another law firm. Plaintiff objects to this Order on two grounds: (1) "[t]he defendants' delay in objecting to the alleged conflict waived the defendants' rights to thereafter object to the alleged



conflict” and (2) “[t]he Magistrate failed to properly analyze ‘the same or a substantially related matter’ standard of Rule 4.1-9 and 4.1-10, R. Regulating Fla. Bar.” Doc. 58 at 5-6 (bolding omitted). These objections are without merit.

Regarding waiver, Plaintiff contends Defendants were “on notice” of Ms. Weston’s entry in this case by virtue of a notice of appearance she filed in mid-March 2006.<sup>1</sup> Based on this fact, Plaintiff asserts that Defendants were dilatory in waiting seven months to file their disqualification motion, and thereby waived the disqualification issue. However, there is no indication that Defendants (as distinguished from their counsel) were aware of Ms. Weston’s entry in the case based on the mere filing of the notice of appearance. Rather, it appears the issue of Ms. Weston’s involvement first surfaced in late August 2006 when Ms. Weston presented herself to conduct the deposition of Biker’s principal, Ergun Recel. Although Defendants allowed the Recel deposition (and a later deposition of Nir Giist) to proceed, they filed their disqualification motion in mid-October 2006. Hence, after learning of the conflict, Defendants waited less than two months, rather than seven months, to seek disqualification. Under these circumstances, Plaintiff’s waiver argument is baseless.

As to the second point, the Court agrees entirely with Judge Baker that the prior sales tax audit matter Ms. Weston handled for Biker is sufficiently related to the issues involved in the present suit to mandate disqualification. Among other things, as Judge Baker noted in his Order (Doc. 57 at 9) and as the Plaintiff at least partially concedes in its Objections (Doc. 58 at 8-9), Biker’s sales are at issue in the case at bar.

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<sup>1</sup>Actually, the relevant document is entitled “Notice of Substitution of Co-Counsel for Plaintiff Becker Designs, Inc.” Doc. 25.

In conclusion, the undersigned judge determines that Judge Baker's December 13th Order is neither clearly erroneous nor contrary to law. Accordingly, it is ORDERED as follows:

1. Plaintiff Becker Designs, Inc.'s Objections to Magistrate's Order on Defendant's Motion for Disqualification of Counsel for the Plaintiff (Doc. 58), filed on December 28, 2006, are OVERRULED.

2. The Magistrate Judge's December 13, 2006 Order (Doc. 57) is AFFIRMED.

3. Plaintiff's Motion for Stay Pending Ruling on Objections to Magistrate's Order (Doc. 59), filed on January 18, 2007, is MOOT.

**DONE and ORDERED** in Chambers, in Orlando, Florida on January 23, 2007.

  
ANNE C. CONWAY  
United States District Judge

Copies furnished to:

Counsel of Record  
Unrepresented Party  
Magistrate Judge Baker