

ESTTA Tracking number: **ESTTA127848**

Filing date: **03/02/2007**

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

Proceeding	91172335
Party	Defendant Spiegelberg, John Spiegelberg, John 2416 Broadway Lubbock, TX 79401
Correspondence Address	ERIK J. OSTERRIEDER SCHUBERT OSTERRIEDER & NICKELSON PLLC 6013 CANNON MOUNTAIN DR # S14 AUSTIN, TX 78749-3311
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Erik J. Osterrieder
Filer's e-mail	ejo@sonlaw.com
Signature	/Erik J. Osterrieder/
Date	03/02/2007
Attachments	Motion and Notice.pdf (3 pages)(15567 bytes) Exhibit 1.pdf (1 page)(20964 bytes) Exhibit 2 - Email to Opposer with Executed Assignment attached.pdf (1 page)(27092 bytes) Exhibit 2 - Executed Trademark Assignment Agreement.tif (1 page)(27220 bytes)

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

TEXAS TECH UNIVERSITY,	§	
Opposer,	§	
	§	
v.	§	OPPOSITION No. 91172335
	§	
JOHN SPIEGELBERG D/B/A	§	
RED RAIDER OUTFITTER,	§	Serial No. 78/620,435
Applicant.	§	Mark: WRECK 'EM TECH
	§	Pub. For Opp. Date: 6/27/06

APPLICANT'S NOTICE OF DISMISSAL OF CIVIL ACTION
COMBINED WITH MOTION TO DISMISS

On August 28, 2006, the Board ordered this instant opposition under suspension pending the disposition of a civil action. TTAB Docket Entry 6. That civil action has now been settled and ordered dismissed with prejudice. Exhibit 1. As a result, Applicant hereby notifies the Board as required by the August 28, 2006 order, and requests that the Board now remove this opposition from suspension. TTAB Docket Entry 6.

On March 2, 2007, Applicant executed and delivered to Opposer an assignment agreement for the mark under this opposition. Exhibit 2. As a result, Opposer is now the owner of the mark under this opposition. *Id.* Accordingly, Applicant respectfully requests dismissal of this opposition as moot.

Respectfully submitted,

Dated: March 2, 2007

By: /Erik J. Osterrieder/
Erik J. Osterrieder
Schubert Osterrieder & Nickelson PLLC
6013 Cannon Mtn. Dr., S14
Austin, Texas 78749
(713) 533-0494
(512) 301-7301 (fax)
ejo@sonlaw.com
ATTORNEY FOR APPLICANT/ASSGINOR

Table of Exhibits

Enclosed are true and correct copies of the following:

Exhibit 1: Order signed March 1, 2007 from the civil action giving rise to the suspension of this opposition at the TTAB; and

Exhibit 2: Executed assignment agreement sent from Applicant to Opposer;

CERTIFICATE OF TRANSMISSION

This is to certify that a true and correct copy of APPLICANT'S NOTICE OF DISMISSAL OF CIVIL ACTION COMBINED WITH MOTION TO DISMISS is being transmitted, via ESTTA, to the Trademark Trial and Appeal Board , on the date of signing below.

Dated: March 2, 2007

By: /Erik J. Osterrieder/
Erik J. Osterrieder
Schubert Osterrieder & Nickelson PLLC
6013 Cannon Mtn. Dr., S14
Austin, Texas 78749
(713) 533-0494
(512) 301-7301 (fax)
ejo@sonlaw.com
ATTORNEY FOR APPLICANT/ASSGINOR

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of APPLICANT'S NOTICE OF DISMISSAL OF CIVIL ACTION COMBINED WITH MOTION TO DISMISS was served on the date of signing below, on Opposer Texas Tech University, through their attorneys of record, *via First Class Mail*, with sufficient postage, in an envelope addressed to:

Kilpatrick Stockton LLP
1100 Peachtree St., N.E., Suite 2800
Atlanta, GA 30309-4530

Dated: March 2, 2007

By: /Erik J. Osterrieder/
Erik J. Osterrieder
Schubert Osterrieder & Nickelson PLLC
6013 Cannon Mtn. Dr., S14
Austin, Texas 78749
(713) 533-0494
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ATTORNEY FOR APPLICANT/ASSGINOR

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

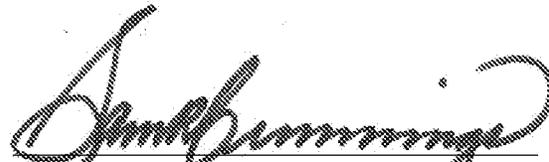
TEXAS TECH UNIVERSITY,)	
)	
Plaintiff/Counter-Defendant,)	
)	
v.)	
)	
JOHN SPIEGELBERG, Individually and)	Civil Action No. 5:05-CV-192-C
d/b/a RED RAIDER OUTFITTER,)	(Consolidated with
)	Civil Action No. 5:05-CV-276-C)
Defendant/Counter-Plaintiff.)	ECF

ORDER

The Court has signed the Order of Permanent Injunction on Consent presented on March 1, 2007. On February 28, 2007, Plaintiff filed its Notice of Withdrawal of its previously filed Motion for Sanctions, stating as follows: "The parties in this matter have settled their differences. As a part of the Settlement Agreement, Texas Tech University has agreed to withdraw its Motion for Sanctions against attorney Stacey Barnes and Stephen Spiegelberg." Based on such representation,

IT IS, ACCORDINGLY, ORDERED that all pending motions are DENIED as moot and the above-styled and -numbered cause is DISMISSED with prejudice, with costs taxed against the party incurring same.

Dated March 1, 2007.


SAM R. CUMMINGS
UNITED STATES DISTRICT COURT

Erik Osterrieder

From: Erik Osterrieder [ejo@sonlaw.com]
Sent: Friday, March 02, 2007 3:49 PM
To: 'Jones, Alicia'
Cc: 'Henn, Charlie'; 'Larry Wharton'; 'Stacey L. Barnes'; 'bbass@bbasslaw.com'
Subject: Executed Trademark Assignment Agreement
Attachments: Executed Trademark Assignment Agreement.tif

Importance: High

March 2, 2007

Attached is the executed trademark assignment agreement from John Spiegelberg that we just received.

Very truly yours,

Erik J. Osterrieder
Schubert Osterrieder & Nickelson PLLC
1109 Gross Street
Houston, Texas 77019
Tel: 713-533-0494
Cell: 713-201-0303
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ejo@sonlaw.com
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Other offices in Austin and Maine

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**IN THE PATENT AND TRADEMARK OFFICE
BEFORE THE ASSIGNMENT DIVISION**

ASSIGNOR: John Spiegelberg
ASSIGNEE: Texas Tech University
TRADEMARKS: WRECK 'EM TECH (Serial No. 78/620,435)
RAIDERLAND (Serial No. 78/620,437)

WHEREAS John Spiegelberg is the owner of Application Serial No. 78/620,435 for the mark WRECK 'EM TECH and Application Serial No. 78/620,437 for the mark RAIDERLAND (collectively, the "Applications"):

WHEREAS, Texas Tech University wishes to acquire the Applications;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, John Spiegelberg assigns to Texas Tech University Application Serial Nos. , the marks underlying the applications, and the goodwill embodied by the marks, and any common law rights associated with the marks, and any common law rights associated with the marks.



John Spiegelberg

Dated: 3/2/07