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Filing date: **12/15/2006**

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

Proceeding	91173119
Party	Plaintiff Perry Swain d/b/a Mojo Originals
Correspondence Address	J. Scott Evans ADAMS EVANS P.A. 301 S. Tryon Street2180 Two Wachovia Center Charlotte, NC 28282 UNITED STATES j.scott.evans@adamspat.com
Submission	Withdrawal of Opposition
Filer's Name	J. Scott Evans
Filer's e-mail	j.scott.evans@adamspat.com
Signature	/J. Scott Evans/
Date	12/15/2006
Attachments	Mojo_Motion to Dismiss.pdf (3 pages)(39849 bytes) Exhibit 1.pdf (9 pages)(160592 bytes) Exhibit 2.pdf (2 pages)(27128 bytes)

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

In Re Application Serial No. 78/724605 for the mark ISLAND MOJO + Design
published in the *Official Gazette* on May 30, 2006

Perry Swain d/b/a)	
MOJO ORIGINALS)	
Opposer,)	
v.)	
Good Jeffrey Randall)	Opposition No.: 91173119
Applicant.)	
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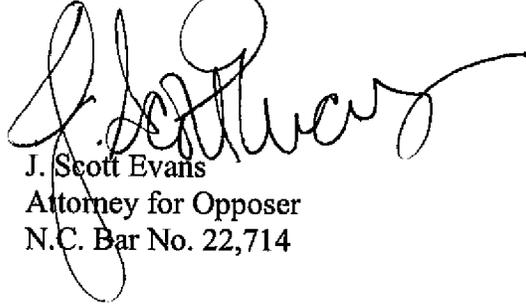
CONSENT MOTION TO DISMISS OPPOSITION

Opposer, Perry Swain d/b/a Mojo Sportswear, by and through its counsel of record hereby moves the Board pursuant to T.M.B.P. §605.03(a) to dismiss the above-captioned opposition proceeding without prejudice in accordance with the terms of the Settlement Agreement between the parties effective December 12, 2006. A copy of said Settlement Agreement is attached hereto as Exhibit 1. Said dismissal, however, is contingent upon the Board's and Trademark Office's acceptance of Applicant's amendment to the specification of goods in Application Serial No. 78/724605 which is attached hereto as Exhibit 2.

Applicant's consent to this dismissal is of record as evidenced by paragraph 2 of the Settlement Agreement between the parties.

Respectfully submitted,

ADAMS EVANS P.A.

A handwritten signature in black ink, appearing to read "J. Scott Evans", written over the typed name and title.

J. Scott Evans
Attorney for Opposer
N.C. Bar No. 22,714

Date: December 15, 2006

Of Counsel:

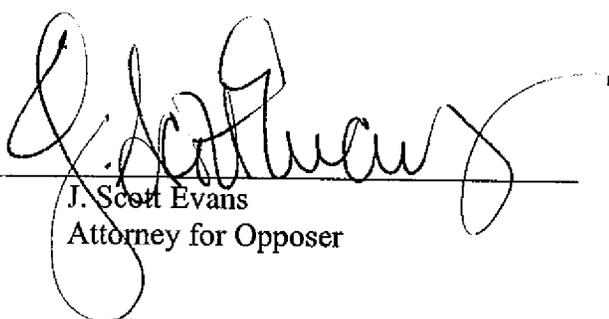
J. Scott Evans (N.C. Bar No. 22,714)
Matthew J. Ladenheim (N.C. Bar No. 29,309)
ADAMS EVANS P.A.
301 South Tryon Street
2180 Two Wachovia Center
Charlotte, NC 28282
Phone: (704) 375-9249
Fax: (704) 375-0729
Our File No. 1256/18

CERTIFICATE OF SERVICE

This is to certify that the foregoing CONSENT MOTION TO DISMISS OPPOSITION was served via email and First Class Mail, postage prepaid, and properly addressed to the following attorney of record:

Jeffrey Randall Good
12807 Valleyhill Street
Woodbridge, Virginia 22192
Email: doc@islandmojo.com

This, the 15th day of December, 2006.



J. Scott Evans
Attorney for Opposer

Of Counsel:

J. Scott Evans (N.C. Bar No. 22,714)
Matthew J. Ladenheim (N.C. Bar No. 29,309)
ADAMS EVANS P.A.
301 South Tryon Street
2180 Two Wachovia Center
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Phone: (704) 375-9249
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Our File No. 1256/18

CONSENT AND SETTLEMENT AGREEMENT

This is a Consent and Settlement Agreement (hereinafter "Agreement") by and between Perry Swain d/b/a MOJO SPORTSWEAR, an individual and resident of North Carolina, with a business address at 1016 Myrtle Avenue, Greenville, North Carolina 27834 (hereinafter "MOJO"), and Jeffrey Randall Good, an individual and resident of Virginia, having a mailing address at 12807 Valleyhill Street, Woodbridge, Virginia 22192 (hereinafter "GOOD").

WHEREAS, GOOD is the owner of a pending U.S. trademark application for the mark ISLAND MOJO + Design (the "GOOD Mark"), Application Serial No. 78724605; and

WHEREAS, MOJO has used the mark MOJO ORIGINALS for various clothing products since at least as early as August 1, 1985 (the "MOJO Mark") and is the owner of the U.S. Trademark Registration No. 1,551,061 for the MOJO Mark ; and

WHEREAS, MOJO has filed a Notice of Opposition before the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office opposing registration of the GOOD Mark Opposition No. 91173119; and

WHEREAS, the parties are not aware of any instances of actual confusion between the MOJO Mark and the GOOD Mark; and

WHEREAS, both parties recognize that with the geographic separation of the parties and the differences in the market demographics, combined with the limitations on use contained within this Agreement, they can co-exist in the marketplace with respect to the sales of their respective goods and services under their respective marks, and both parties wish to avoid the cost of litigation and settle their differences with regard to the

use and registration of the GOOD Mark.

NOW, THEREFORE, in consideration of the mutual undertakings set forth herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. GOOD will amend Application Serial No. 78724605 to delete the goods in Class 25.

2. Within ten (10) business days of executing this Settlement Agreement, the parties will file a Consent Motion to Dismiss ("Motion") with the Trademark Trial and Appeal Board. Said Motion shall be contingent on the Trademark Trial and Appeal Board's acceptance of an amendment to the identification of goods contained in a Consent to Amend Application ("Amendment") wherein GOOD shall delete the goods in Class 25 from Application Serial No. 78724605. This Amendment shall be attached to the Motion. The Motion and Amendment shall be in the form attached hereto as Exhibit A.

3. GOOD shall only use the GOOD Mark on hats, shirts and shorts sold in association with his surf board business and through his surf board shop.

4. The parties agree that owing to the difference in their respective marks, the differences in the geographic areas in which GOOD's goods and services are to be offered in association with the GOOD Mark, the market demographics and the limitations on use set forth in paragraph 3 of this Agreement that there is no likelihood of public confusion between their respective marks should both marks be used simultaneously.

5. MOJO consents to GOOD's use and registration of the GOOD Mark in accordance with the terms of this Agreement and MOJO further agrees that it will not

oppose or otherwise impede the prosecution or registration of the GOOD Mark provided that GOOD remains in full compliance with the terms and conditions of this Agreement.

6. Both parties will use their best good-faith efforts to avoid confusion in the marketplace.

7. Neither party will attempt, in any way, to associate itself with the other party nor its goods or services provided under the MOJO Mark or the GOOD Mark

8. Neither party is aware of any actual confusion between MOJO and GOOD arising from their respective use of their respective marks in connection with the goods and services as described herein.

9. The parties agree that if either party becomes aware of any actual confusion between the respective parties' use of their respective marks, the parties will each appoint a high level executive to form a committee of two to deal with questions of avoidance of confusion, and thereby will work together in good faith to avoid, alleviate or minimize any likelihood of confusion.

10. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

11. This Agreement shall be construed without regard to the party or parties responsible for the preparation of the same and this Agreement shall be deemed as prepared jointly by the parties hereto. Any ambiguity or uncertainty existing herein shall not be interpreted or construed against either party hereto.

12. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance, shall, to any extent be invalid or unenforceable, the remainder of this Agreement or application of such term or provision

to any person or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition or provision of this Agreement shall be valid and shall be enforced to the fullest extent provided by law.

13. This Agreement contains the entire agreement between the parties hereto and may not be modified in any of its terms other than by a written instrument signed by both parties.

14. Each party to this Agreement acknowledges that it has read this Agreement and that it fully understands and appreciates its contents and that it executes this Agreement voluntarily and of its own free will.

15. Waiver of any breach of this Agreement by any party shall not be a waiver of any other breach of this Agreement.

16. This Agreement shall be binding on the parties at the time the last of them executes it below, which shall be the effective date thereof. This Agreement may be executed in counterparts. The signatories represent and warrant that they have full authority to enter into this Agreement.

17. The validity of this Agreement and the rights, obligations and relations of the parties hereunder shall be construed and determined under and in accordance with the laws of the State of North Carolina; provided, however, that no effect shall be given to any choice of laws principles which would require this Agreement to be interpreted under the laws of any other jurisdiction.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers and their corporate seals or stamps to be

hereunto affixed as the case may be.

Date: 12-12-06


Perry Swain d/b/a Mojo Sportswear


Jeffrey Randall Good

Date: 29 NOV 2006

Exhibit A

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

In Re Application Serial No. 78/724605 for the mark ISLAND MOJO + Design
published in the *Official Gazette* on May 30, 2006

Perry Swain d/b/a)	
MOJO ORIGINALS)	
Opposer,)	
v.)	
Good Jeffrey Randall)	Opposition No.: 91173119
Applicant.)	
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CONSENT MOTION TO DISMISS OPPOSITION

Opposer, Perry Swain d/b/a Mojo Sportswear, by and through its counsel of record hereby moves the Board pursuant to T.M.B.P. §605.03(a) to dismiss the above-captioned opposition proceeding without prejudice in accordance with the terms of the Settlement Agreement between the parties effective _____. A copy of said Settlement Agreement is attached hereto as Exhibit 1. Said dismissal, however, is contingent upon the Board's and Trademark Office's acceptance of Applicant's amendment to the specification of goods in Application Serial No. 78/724605 which is attached hereto as Exhibit 2.

Applicant's consent to this dismissal is of record as evidenced by paragraph 2 of the Settlement Agreement between the parties.

Respectfully submitted,

ADAMS EVANS P.A.

J. Scott Evans
Attorney for Opposer
N.C. Bar No. 22,714

Date: _____

Exhibit 2

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

In Re Application Serial No. 78/724605 for the mark ISLAND MOJO + Design published in the *Official Gazette* on May 30, 2006

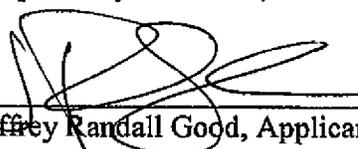
Perry Swain d/b/a)	
MOJO ORIGINALS)	
Opposer,)	
v.)	
Good Jeffrey Randall)	Opposition No.: 91173119
Applicant.)	
_____)	

CONSENT MOTION TO AMEND APPLICATION

Pursuant to paragraph 2 of the Settlement Agreement between the parties, Applicant hereby requests that the Board delete the Class 25 identification of goods from Application Serial No. 78/724605.

Opposer has consented to the above-referenced amendment and, pursuant to T.M.E.P. § 514.01, Applicant has served a copy of this Motion on Opposer's counsel. Given that this amendment merely narrows Applicant's goods, it is respectfully requested that the Board grant the present motion. T.M.E.P. § 514.02.

Respectfully submitted,



Jeffrey Randall Good, Applicant

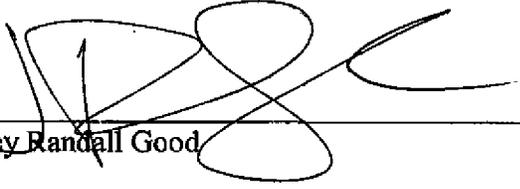
Date: 29 NOV 2006

CERTIFICATE OF SERVICE

This is to certify that the foregoing CONSENT MOTION TO AMEND APPLICATION was served via First Class Mail, postage prepaid, and properly addressed to the following attorney of record:

J. Scott Evans, Esq.
ADAMS EVANS, P.A.
2180 Two Wachovia Center
301 S. Tryon Street
Charlotte, North Carolina 28282

This, the 15th day of December, 2006.



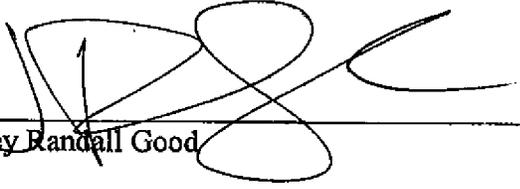
Jeffrey Randall Good

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This, the 15th day of December, 2006.



Jeffrey Randall Good