

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

In the matter of Trademark Application Serial No. 76/613881
For the Mark MANDARINE
Published in the Official Gazette JUNE 5, 2007

MINE DESIGN D/B/A/ OF AMAL FLORES
(U.S.),

Opposers,

v.

VOTIVO, LTD., a Washington corporation,

Applicant,

VOTIVO, LLC, a South Carolina Limited
Liability Company,

Defendant.

APPLICANT'S AND DEFENDANT'S MOTION
FOR LEAVE TO SUPPLEMENT RECORD IN
SUPPORT OF MOTION FOR RECONSIDERATION

Opposition No. 91178747

MOTION FOR LEAVE TO SUPPLEMENT RECORD
IN SUPPORT OF RECONSIDERATION

Come now Applicant VOTIVO, Ltd., and Defendant VOTIVO, LLC (hereafter, collectively, "VOTIVO"), and make this Motion for Leave to Supplement Record in Support of Motion for Reconsideration.

The parties herein have filed pending cross-motions for reconsideration arising from the Board's September 19, 2008 Order following the parties' cross-motions for summary judgment. The cross-motions for reconsideration have been fully briefed by the parties.



During the pendency of the cross-motions for reconsideration, the parties litigated in *VOTIVO, Ltd. v. Mine Design*, Case No. CV 03-6017 (referred to in prior pleadings on reconsideration as “Mine Design I”, hereafter as “Mine I”). Mine I is the case in which the Federal District Court entered both a Judgment and Permanent Injunction against Mine Design. In order to resolve the procedural dispute relating to how VOTIVO is to enforce its rights under the existing Settlement Agreement, VOTIVO moved in the Mine I case for an order to show cause why Mine Design should not be held in contempt based upon application of the Permanent Injunction.

The Court in Mine I has now entered an Order Denying Motion to Enforce The Permanent Injunction. The Order is provided in connection with VOTIVO’s Notice of Federal District Court Decision in Related Litigation, filed herewith. The Order provides a number of rulings relating to the Settlement Agreement between the parties (which has been at the core of the litigation presently before the Board) that VOTIVO believes are dispositive with respect to Mine Design’s lack of standing to pursue the present Opposition, and support the summary judgment dismissal of this proceeding.

LEGAL AUTHORITY

The legal authority for this Motion for Leave to Supplement Record in Support of Motion for Reconsideration includes Trademark Rule 2.127(d); and VOTIVO’s Memorandum in Support of Motion for Leave to Supplement Record in Support of Motion for Reconsideration, filed contemporaneously herewith.

EVIDENCE

The evidentiary support for VOTIVO's Motion includes (1) the Declaration of Steven W. Edmiston in Support of Motion for Leave to Supplement Record in Support of Motion for Reconsideration , and exhibit thereto, and (2) the pleadings and records otherwise on file herein.

RELIEF REQUESTED

VOTIVO requests that its Motion for Leave to Supplement Record in Support of Motion for Reconsideration be granted and considered in connection with VOTIVO's pending Motion for Reconsideration, and that Mine Design's Opposition be dismissed with prejudice.

DATED: March 26, 2009.

Respectfully Submitted,

INVICTA LAW GROUP, PLLC

By



Mark V. Jordan, WSBA No. 18461
Steven W. Edmiston, WSBA No. 17136
Heather M. Morado, WSBA No.35135
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Katy M. Albritton

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Mr. Carlos Candeloro
1601 N. Sepulveda Blvd. 239
Manhattan Beach, CA 90266



Katy M. Albritton

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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MINE DESIGN D/B/A/ OF AMAL FLORES
(U.S.),

Opposer,

v.

VOTIVO, LTD., a Washington corporation,

Applicant,

VOTIVO, LLC, a South Carolina Limited
Liability Company,

Defendant.

APPLICANT'S AND DEFENDANT'S
MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO SUPPLEMENT
RECORD IN SUPPORT OF MOTION FOR
RECONSIDERATION

Opposition No. 91178747

I. INTRODUCTION.

VOTIVO, LLC, successor in interest to VOTIVO, Ltd., (hereafter, "VOTIVO"), seeks to register the mark MANDARINE in standard character form for "bath salts and hand lotion" in International Class 3. Mine Design D/B/A Amal Flores ("Mine Design") opposes the registration. On or about March 2008, the parties filed Cross-Motions for Summary Judgment ("Cross-Motions"). VOTIVO's Cross-Motion sought to dismiss Mine Design's Opposition based upon, among other grounds, Mine Design's lack of standing to oppose the subject registration for MANDARINE. On September 19, 2008, the Board entered an Order denying the Cross-Motions filed by the parties in this matter.

Both parties filed Motions for Reconsideration of that Order. VOTIVO continues to believe and assert that Mine Design does not have standing, as a matter of law, to proceed with the Opposition. Accordingly, VOTIVO sought reconsideration of the Board's determinations relating to Mine Design's standing, including whether questions of fact existed relating to the interpretation and construction of the Settlement Agreement between the parties, whether the Settlement Agreement was effective to dismiss the claims in the first civil action,¹ and the effect of that Agreement on the earlier Permanent Injunction. See Order, pp. 5-6 (for convenience, a copy of the Order is appended to this Memorandum as Exhibit 1).

During the pendency of the Cross-Motions, the parties have conducted further litigation in *VOTIVO, Ltd. v. Mine Design*, Case No. CV 03-06017 (referred to in prior pleadings on summary judgment and reconsideration as Mine Design I, and hereinafter, as "Mine I"). In Mine I, on November 7, 2005, the Federal District Court entered both a Judgment and Permanent Injunction against Mine Design. To resolve the ongoing dispute relating to the remedies available to VOTIVO to enforce its trademark rights under the existing Settlement Agreement, VOTIVO brought a motion for an order to show cause why Mine Design should not be held in contempt based upon application of the Permanent Injunction.

On or about March 10, 2009, the Court in Mine I entered an Order Denying Motion to Enforce The Permanent Injunction (hereafter, "Mine I Order"). See

¹ *VOTIVO, Ltd. v. Mine Design*, Case No. CV 03-06017.

Declaration of Steven W. Edmiston in Support of Motion for Leave to Supplement Record in Support of Motion for Reconsideration, Exhibit 2. However, in denying VOTIVO's Motion, the Mine I Order also interprets and construes the Settlement Agreement between the parties. This Settlement Agreement sits at the core of the present TTAB litigation, as well as the Cross-Motions for Reconsideration presently before the Board. The Mine I Court provided clarity regarding the construction of the May 2006 Settlement Agreement, and the prohibition against Mine Design's use of VOTIVO trademarks:

As part of the Settlement, Mine agreed that it would not directly or indirectly use any of Votivo's registered trademarks, including the trademarks set forth in the permanent injunction.

Mine I Order, p. 2. In addition, the Court addressed limitations on the remedies available to the parties: "the parties have expressly agreed to required conduct in response to all future trademark infringement;" "there is no future infringement which is not embraced within the Settlement's terms;" and "...no other remedy is permissible except as provided under the Settlement." Mine I Order, p. 4. The Mine I Court focused intently upon the perceived purpose of the Agreement:

However, in the preamble to the Settlement, the parties state that they intend to not only resolve the Lawsuits but additionally "the dispute between them." (Settlement at "Recitals.") Permitting Votivo to enforce the injunction would therefore be in direct conflict with *the goal of the contract, which is to provide a remedial procedure for the full range of future trademark disputes, while limiting "further cost, expense, or continued litigation."* (Id.)

Mine I Order, p. 5 (emphasis supplied).

Because these rulings with respect to the construction of the Settlement Agreement impact the remedies available to *both* VOTIVO and Mine Design (and ultimately relate to Mine Design's lack of standing), VOTIVO moves to supplement the record with the Mine I Order.²

II. EVIDENCE RELIED UPON.

The facts upon which this Motion are based were previously set out in Applicant's and Defendant's Memorandum (1) in Opposition to Opposer's Motion for Summary Judgment and (2) in Support of Cross-Motion; the Trademark Trial and Appeal Board's September 19, 2008 Order in this matter; Applicant's Memorandum in Support of Motion for Reconsideration (and Applicant's subsequent pleadings and evidence relating thereto); and the March 10, 2009, Order entered in Mine I (appended as Exhibit 1 to the Declaration of Steven W. Edmiston in Support of Motion for Leave to Supplement Record in Support of Motion for Reconsideration), and are incorporated herein by this reference.

III. ARGUMENT.

A) Mine Design bears the burden of establishing that it has standing to pursue this Opposition.

The Lanham Act, 15 U.S.C.A. § 1063(a) allows an entity to oppose a registration if it is or will be damaged by the registration of a trademark. The damage

² VOTIVO is presently evaluating whether to appeal the Mine I Order. However, VOTIVO believes (1) supplementing the record with the Mine I Order provides a complete record given the pending motions for reconsideration, and (2) the Mine I Order, even if properly subject to appeal, nonetheless resolves the standing issue before the Board.

requirement relates to an entity's standing to oppose. The Federal Circuit emphasizes two judicially created requirements for standing for inter partes cases. The opposer must have: (1) a "real interest" in the proceedings; and (2) a reasonable basis for the belief of damage. Ritchie v. Simpson, 170 F.3d 1092, 1095 (Fed. Cir. 1999). The purpose of requiring standing is to prevent such proceedings from being brought by "mere intermeddlers" who "do not raise a real controversy from bringing oppositions... in the PTO." *Id.* Even where proprietary rights in the mark are not required to oppose, an opposer must be able to assert an *equal* right to use the mark for the goods. *Id.*; Jewelers Vigilance Committee, Inc. V. Ullenberg Corp. 823 F.2d 490, 2 U.S.P.Q.2d 2021, 2024 (Fed. Cir. 1987), on remand, 5 U.S.P.Q.2d 1622 (T.T.A.B. 1987) rev'd, 853 F.2d 888 (opposition sustained on the merits).

To establish a "real interest", opposer must show that it is *among* the subset of the general public that are in fact among the injured. *Id.*, at 1096; see also Stoller v. Ponce, 113 Fed.Appx. 403, 405-406 (Fed. Cir. 2004) (no standing where no admissible evidence provided to demonstrate a real interest). With respect to the second part of the test, the "reasonable" belief of damage, the Ritchie court required the opposer's belief of damage have a "reasonable basis in fact." *Id.*, at 1098. The court discussed several ways the opposer could meet this second test, including showing that (a) opposer "possesses a trait or characteristic that is clearly and directly implicated by the opposed trademark;" and (b) that others share the same belief of harm from the proposed mark (i.e., the facts show "the belief is not simply the opposer's point of view"). *Id.*, at 1098. To meet this second showing, the opposer

must use surveys or public opinion or petition evidence, or affidavits from public interest groups, representing the people allegedly sharing the damage caused by the mark. Id.

B) The Mine I Order establishes that Mine Design has no standing to oppose VOTIVO's marks before the TTAB.

The Mine I Order provides clarity regarding the construction of the May 2006 Settlement Agreement:

As part of the Settlement, Mine agreed that it would not directly or indirectly use any of Votivo's registered trademarks, including the trademarks set forth in the permanent injunction.

Mine I Order, p. 2. It follows that if Mine Design cannot use any of the marks set forth in the Permanent Injunction, it cannot possibly have standing to oppose any of the marks. As a result of the Settlement Agreement with VOTIVO, Mine Design simply *does not* possess a "real interest in the proceedings." Because Mine Design cannot use bath salts using the name "mandarin" without being *in direct violation of the terms of the Settlement Agreement*, Mine Design cannot in good faith demonstrate (as required by the first prong of Ritchie) that it could be *among* the subset of the general public that conceivably could be among the allegedly "injured."

It is equally impossible as a matter of law for Mine Design to meet the second prong of the test under Ritchie, that it reasonably believes that it can somehow be damaged. Again, because Mine Design has released its claims under the Settlement Agreement, it cannot show that it "possesses a trait or characteristic that is clearly and directly implicated by the opposed trademark." Mine Design has also failed to offer

any third-party evidence, as suggested by Ritchie, that its belief of damage “is not simply the opposer’s point of view.” Id. Mine Design presents no surveys or public opinion or petition evidence, nor affidavits from public interest groups representing the people allegedly sharing the damage caused by the mark. See Ritchie 170 F.3d at 1098.

C) **Mine Design has no standing because the limited remedy under the Settlement Agreement does not include litigation of trademark disputes before the Board.**

The Mine I Court construed the language from the Settlement Agreement to establish the Agreement’s single over-arching purpose:

However, in the preamble to the Settlement, the parties state that they intend to not only resolve the Lawsuits but additionally “the dispute between them.” (Settlement at “Recitals.”) Permitting Votivo to enforce the injunction would therefore be in direct conflict with *the goal of the contract, which is to provide a remedial procedure for the full range of future trademark disputes, while limiting “further cost, expense, or continued litigation.”* (Id.)

Mine I Order, p. 5 (emphasis supplied). By interpreting the goal of the Settlement Agreement to be providing the sole remedial procedure for trademark disputes, the Court effectively resolves Mine Design’s lack of standing in the present case.

The Mine I Court, faced only with VOTIVO’s motion relating to the prospective application of the Permanent Injunction as an available remedy, nonetheless used broad language in determining that “the parties have expressly agreed to required conduct in response to all future trademark infringement;” “there is no future infringement which is not embraced within the Settlement’s terms;” and

“...no other remedy is permissible except as provided under the Settlement.” Mine I Order, p. 4. Thus, the Court did not make any decision with respect to the merits of any claim by VOTIVO relating to its trademark rights; rather, the Court stated that the Permanent Injunction was not the appropriate mechanism for the enforcement of VOTIVO’s rights.

The Court focused exclusively on Paragraph 8 of the Settlement Agreement, which addresses future infringement by Mine Design. Paragraph 8 does not provide Mine Design the opportunity to challenge VOTIVO’s trademark rights through the TTAB. In in the event Mine Design begins to use an infringing mark (“OFFENDING TERM”):

“VOTIVO shall inform MINE in writing...of such claim (“WRITTEN NOTICE”). MINE shall have 30 days from the NOTICE DATE (the “GRACE PERIOD”) to respond to said WRITTEN NOTICE...Provided MINE [does not infringe VOTIVO’s trademarks or those marks described in the Permanent Injunction], VOTIVO shall not bring suit...” (Settlement Agreement, ¶8(a)).

If the procedure provided under Paragraph 8(a) of the Settlement Agreement does not resolve the dispute between the parties regarding Mine’s use of an infringing mark, Paragraph 8(b) provides VOTIVO may bring a *new* lawsuit:

- b. VOTIVO shall have the right to bring a trademark infringement suit against MINE only if, after 30 days have elapsed from the NOTICE DATE:
 - (i) the Parties cannot reasonable agree on a SUBSTITUTE TERM;
 - (ii) MINE has not provided VOTIVO with reasonable assurance that MINE has otherwise discontinued its use of the OFFENDING TERM; or
 - (iii) MINE does not respond to the WRITTEN

NOTICE within the GRACE PERIOD.

There is no provision in Paragraph 8, or anywhere else in the Settlement Agreement, allowing Mine Design to institute TTAB proceedings attacking VOTIVO's registration of "MANDARINE" or any of the other VOTIVO trademarks subject to the Settlement Agreement. Any other conclusion would violate "the goal of the contract, which is to provide a remedial procedure that limits "further cost, expense, or continued litigation."³ Mine I Order, p. 5.

IV. RELIEF REQUESTED.

VOTIVO requests that VOTIVO's Motion for Leave to Supplement Record in Support of Motion for Reconsideration be granted, and Mine Design's Opposition be dismissed with prejudice.

DATED: March 27, 2009.

Respectfully Submitted,
INVICTA LAW GROUP, PLLC

By 
Mark V. Jordan, WSBA No. 18461
Steven W. Edmiston, WSBA No. 17136
Heather M. Morado, WSBA No. 35135
1000 Second Ave., Suite 3310
Seattle, Washington 98104-1019
Attorneys for Applicant

³ Further, the Court's construction of the Settlement Agreement is also supported by Paragraph 10 of the Settlement Agreement, entitled, "Covenant Not to Sue:"

"Each party hereto... agrees that they will forever refrain and forebear from bringing, commencing or prosecuting any action, lawsuit, claim, or proceeding against the other Party hereto based on any claim, debt or obligation of any kind that is released or discharged herein." (Settlement Agreement, ¶10).

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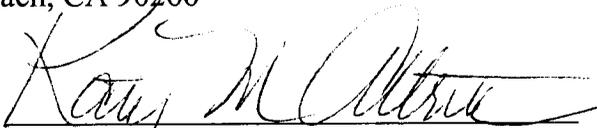

Katy M. Albritton

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For the Mark MANDARINE
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MINE DESIGN D/B/A/ OF AMAL FLORES
(U.S.),

Opposers,

v.

VOTIVO, LTD., a Washington corporation,

Applicant,

VOTIVO, LLC, a South Carolina Limited
Liability Company,

Defendant

DECLARATION OF STEVEN W. EDMISTON IN
SUPPORT OF MOTION FOR LEAVE TO
SUPPLEMENT RECORD IN SUPPORT OF
MOTION FOR RECONSIDERATION

Opposition No. 91178747

Steven W. Edmiston, declares and states as follows:

1. I am counsel of record for the Applicant/Defendant. I have personal knowledge of the following facts and am competent to testify thereto.
2. I make this declaration in support of Applicant and Defendant's Motion for Leave to Supplement Record in Support of Motion for Reconsideration.
3. The parties to this matter have re-instituted proceedings in *VOTIVO, Ltd. v. Mine Design*, Case No. CV 03-06017 (hereafter, "Mine I"), in the United States District Court, Central District of California. The Court in Mine I entered an

Order on or about March 10, 2009. A true and correct copy is attached hereto as Exhibit 1.

I declare under penalty of perjury under the laws of the United States of America and the state of Washington that the foregoing is true and correct to the best of my knowledge and belief.

EXECUTED at Seattle, Washington this 26th day of March 2009.



Steven W. Edmiston

DECLARATION OF STEVEN W. EDMISTON IN
SUPPORT OF MOTION FOR LEAVE TO
SUPPLEMENT RECORD IN SUPPORT OF
MOTION FOR RECONSIDERATION - 2

CERTIFICATE OF EXPRESS MAILING
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Manhattan Beach, CA 90266



Katy M. Albritton

DECLARATION of Steven W. Edmiston in
Support of Motion For Leave to Supplement
Recond in Support of Motion For Reconsideration

Exhibit 1

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JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VOTIVO LTD, a Washington corporation,)	Case No. CV 03-06017 DDP (Ex)
)	
Plaintiff,)	ORDER DENYING MOTION TO ENFORCE
)	THE PERMANENT INJUNCTION
v.)	
)	[Motion filed on November 17,
MINE DESIGN,)	2008, Dkt. No. 89]
)	
Defendants.)	

I. BACKGROUND

This matter arises from trademark infringement litigation between Plaintiff Votivo, LLC¹ ("Votivo") and Defendant Mine Design ("Mine"), both of whom are makers of home decor and personal care products such as scented candles, burning sticks, and incense.

The parties have been involved in two separate lawsuits with each other, both alleging trademark infringement. The first lawsuit ("Mine I") was filed in 2003, which has been revived by Votivo's present motion before this Court. Previously in this case (Mine I), a default judgment and permanent injunction were entered against Mine. Mine appealed this judgment to the Ninth Circuit. The second lawsuit was filed in 2005 ("Mine II"). Both Mine II and the Mine I appeal were ongoing litigation when the parties decided

¹ This Court's prior order substituted Votivo, LLC for Votivo, Ltd. (Order, December 22, 2008.)

1 to enter a settlement agreement (the "Settlement") in May 2006. As
2 a result of entering the Settlement, the parties stipulated to a
3 dismissal of the Mine I appeal and of the Mine II litigation.

4 As part of the Settlement, Mine agreed that it would not
5 directly or indirectly use any of Votivo's registered trademarks,
6 including the trademarks set forth in the permanent injunction.
7 Both parties also agreed to release all claims against each other
8 up to the date of the Settlement, to provide notice to each other
9 before initiating new litigation and the opportunity to informally
10 resolve any disputes. (Settlement ¶¶ 6, 8.)

11 Nevertheless, on November 17, 2008, Votivo filed a motion in
12 Mine I for an order to show cause why Mine should not be held in
13 contempt of the permanent injunction entered in this case.
14 Votivo's position is that, while the parties stipulated to the
15 dismissal of the appeal of the Mine I decision as a part of their
16 Settlement, this did not affect the underlying permanent injunction
17 of the district court.

18 In its order of December 22, 2008, this Court found that the
19 Settlement itself did not unambiguously address whether the
20 permanent injunction remained in effect, and ordered additional
21 briefing from the parties on this issue.

22 Votivo and Mine have now submitted supplemental briefing for
23 the Court's consideration.

24 II. DISCUSSION

25 "[T]he interpretation of a settlement agreement is governed by
26 the same principles applicable to any other contractual agreement."
27 Winet v. Price, 4 Cal. App. 4th 1159, 1165 (Cal. Ct. App. 1992).
28 Under statutory rules of contract interpretation, the mutual

1 intention of the parties when the contract is formed governs
2 interpretation. Cal. Civ. Code § 1636. Such intent is to be
3 inferred, if possible, solely from the written provisions of the
4 contract, id. § 1639, as long as this does not result in
5 "absurdity," id. § 1638. The words in the contract "are to be
6 understood in their ordinary and popular sense, rather than
7 according to their strict legal meaning; unless used by the parties
8 in a technical sense, or unless special meaning is given to them by
9 usage." Id. § 1644; Eott Energy Corp. v. Storebrand Internat. Ins.
10 Co., 45 Cal. App. 4th 565, 574 (Cal. Ct. App. 1996) ("This reliance
11 on common understanding of language is bedrock. Equally important
12 are the requirements of reasonableness and context.").

13 Although this Court previously found that the Settlement was
14 ambiguous as to whether Votivo had retained its right to enforce
15 the permanent injunction, the Court also left this issue open for
16 additional arguments by the parties in supplemental briefing.
17 After reviewing the additional argument submitted by the parties,
18 the Court now finds that the Settlement is unambiguous in its
19 construction and that Votivo has waived any right to enforce the
20 permanent injunction entered in the present suit (Mine I).

21 In paragraph 8 of the Settlement, the parties describe
22 required conduct for all future prosecution of trademark
23 infringement. Under the heading "Notice of Trademark Rights," the
24 Settlement states:

25
26 After the EFFECTIVE DATE, in each instance VOTIVO . . . in
27 good faith believes MINE . . . is using a term for which
28 VOTIVO has [a valid trademark], VOTIVO shall inform MINE in
writing . . . of such claim ("WRITTEN NOTICE"). MINE shall
have 30 days from the NOTICE DATE ("the GRACE PERIOD") to
respond to said WRITTEN NOTICE. . . . Mine shall have 30 days

1 . . . to respond to said WRITTEN NOTICE. Provided MINE [does
2 not infringe VOTIVO's trademarks or those marks described in
the Permanent Injunction], VOTIVO shall not bring suit
3 (Settlement ¶ 8 (emphasis added).) The use of "in each instance"
4 followed by mandatory language ("shall") operates to subsume all
5 future trademark litigation between the parties. Therefore, no
6 other remedy is permissible except as provided under the
7 Settlement. In the event that the Settlement's contractual
8 remedies do not suffice, at that point either party is permitted to
9 bring a new lawsuit:

10

11 VOTIVO shall have the right to bring a trademark infringement
12 suit against MINE only if, after 30 days have elapsed from the
NOTICE DATE:

- 13 (i) the Parties cannot reasonably agree on a SUBSTITUTE
TERM;
14 (ii) MINE has not provided VOTIVO with reasonable
assurances that MINE has otherwise discontinued its use
of the OFFENDING TERM;
15 (iii) MINE does not respond to the WRITTEN NOTICE within
the GRACE PERIOD.

16

17 (Id. ¶ 8b (emphasis added.) Because the parties have expressly
18 agreed to required conduct in response to all future trademark
19 infringement, Votivo has waived any right to alternatively enforce
20 the permanent injunction.

21 Votivo argues that the permanent injunction was not expressly
22 considered in the Settlement, and therefore the Settlement does not
23 preclude enforcement of the injunction as an additional or
24 supplemental remedy. This argument fails because there is no
25 future infringement which is not embraced within the Settlement's
26 terms, and enforcement of rights through the injunction is not
27 mentioned as a remedy.

28 / / /

1 Votivo next argues that the injunction remains enforceable
2 because the parties only agreed to dismiss the Mine I appeal, which
3 leaves the Mine I injunction intact. It is true that the parties
4 expressly defined the Mine I appeal and the Mine II case as
5 "Lawsuits," which the parties then agreed to dismiss. (Settlement
6 ¶ 1.) However, in the preamble to the Settlement, the parties
7 state that they intend to not only resolve the Lawsuits but
8 additionally "the dispute between them." (Settlement at
9 "Recitals.") Permitting Votivo to enforce the injunction would
10 therefore be in direct conflict with the goal of the contract,
11 which is to provide a remedial procedure for the full range of
12 future trademark disputes, while limiting "further cost, expense,
13 or continued litigation." (Id.)

14 Votivo's motion to enforce the permanent injunction is
15 effectively continuing litigation, and therefore foreclosed by the
16 express terms of the Settlement.

17 **III. CONCLUSION**

18 The Court DENIES Votivo's Motion for an Order to Show Cause.
19 The Court finds that Votivo has waived any right to enforce the
20 permanent injunction entered in this case.

21
22
23 IT IS SO ORDERED.

24
25 Dated: March 10, 2009



26 DEAN D. PREGERSON
27 United States District Judge
28