

ESTTA Tracking number: **ESTTA218464**

Filing date: **06/17/2008**

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

Proceeding	92049203
Party	Plaintiff Skeeter Products, Inc.
Correspondence Address	Gregory B. Phillips Knobbe, Martens, Olson & Bear LLP 2040 Main Street14th Floor Irvine, CA 92614 UNITED STATES efiling@kmob.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Gregory B. Phillips
Filer's e-mail	efiling@kmob.com
Signature	/gregory phillips/
Date	06/17/2008
Attachments	Complaint MDFL 08cv1065 (2).pdf (9 pages)(228149 bytes) Exhibit A to Complaint MDFL 08cv1065.pdf (15 pages)(550312 bytes)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SKEETA, INC., a Florida corporation,

Plaintiff,

vs

SKEETER PRODUCTS, INC., a Texas Case No. _____
corporation,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

THE PARTIES

1. Plaintiff, Skeeta, Inc. (Plaintiff), is incorporated under the laws of the State of Florida and has its principal place of business at 19706 77th Avenue East, Bradenton, Florida 34202.
2. Upon information and belief, Defendant, Skeeter Products, Inc. (Defendant), is incorporated under the laws of the State of Texas and has its principal place of business at One Skeeter Road, Kilgore, Texas 75663.

JURISDICTION AND VENUE

3. Jurisdiction is based upon the Federal Trademark Act, §§15 U.S.C. 1051-1127, and in 28 U.S.C. §§1331, 1338 and 2201-02. The amount in controversy exceeds, exclusive of interest and costs, Seventy-five Thousand Dollars (\$75,000.00).

4. This Court has personal jurisdiction over Defendant in that, upon information and belief, Defendant regularly solicits business in this State, and as a result Defendant claims the need to cancel the trademarks of Plaintiff which principally operates in Florida.
5. Venue is proper in the District pursuant to 28 U.S.C. §1391(d), and further, this is an action seeking a declaratory judgment of no infringement and the claim is based on the defendant's threatening an infringement suit, on multiple occasions, the claims arises in the forum state, ie. Florida, where the defendant sent a threatening letter to the plaintiff. See Mad Hatter, Inc. v. Mad Hatters Night Club Co., 399 F.Supp. 889 (E.D. Mich. 1975).

STATEMENT OF FACTS

Background

6. Plaintiff is the owner, by assignment, of US Trademark Reg. 2,997,646 (the '646 registration) claiming a date of first use of December 5, 1993, registered September 20, 2005, for the word mark SKEETA in International Class 22 for use in association with *tents* and International Class 25 for use in association with jackets and pants. (Exhibit 1 attached hereto.)
7. Plaintiff is the owner, by assignment, of US Trademark Reg. 3,015,253 (the '253 registration), claiming a date of first use of December 5, 1993, registered November 15, 2005, for the mark SKEETA and Design in international Class 22 for use in association with *tents* and International Class 25 for use in association with *jackets and pants*. (Exhibit 2 attached hereto.)



8. Defendant is the Applicant of federal application for registration Serial No. 78/972275 (the '275 application), filed September 12, 2006, for the mark SKEETER and Design for use in association with *boats and structural parts thereof* (Class 12) and *clothing* (Class 25). (Exhibit 3 attached hereto.)



9. The Trademark Examiner at the United States Patent and Trademark Office (USPTO) assigned to Defendant's application initially refused the application for likelihood of confusion in view of at least four (4) registrations including Plaintiff's two (2) registrations.
10. Defendant responded to the USPTO, arguing that there was no "likelihood of confusion" between Defendant's pending application and Plaintiff's cited two (2) registrations.
11. In a second Trademark Examiner's Office Action, refusal of Defendant's application was continued for likelihood of confusion between Defendant's mark and Plaintiff's two (2) registrations.
12. On or about August 22, 2007, following the first two (2) refusals and responses, counsel for Defendant contacted Plaintiff by telephone to inquire about a Consent

from Plaintiff to USPTO stating that there was no likelihood of confusion between Plaintiff's and Defendant's marks and that Plaintiff had no objection to registration of Defendant's pending trademark application (the '275 application).

13. Plaintiff agreed to consider any proposal Defendant submitted to Plaintiff in writing.
14. Then, on or about September 10, 2007, Defendant's counsel demanded Plaintiff agree to Defendant's proposed Consent Agreement or "they would have no option but to file a Petition to Cancel" Plaintiff's registrations if the Trademark Examiner continued to refuse allowance of Defendant's '275 application. (Exhibit 4 attached hereto.)
15. Subsequent to Defendant's demands, on September 21, 2007, in response to the Trademark Examiner's second refusal, Defendant reiterated that no likelihood of confusion existed between Defendant's pending application (the '275 application) and Plaintiff's two (2) cited registrations stating that "if the Examining Attorney maintains the refusal based on these SKEETA Marks, the decision forces Applicant [Defendant] to Petition To Cancel the SKEETA registrations based upon Applicant's earlier SKEETER registrations" (US Reg. 1,457,907 and US Reg. 758,037).
16. On October 10, 2007, the Trademark Examiner issued a final refusal to register Defendant's "modernized" mark in view of Plaintiff's two (2) registrations stating "Applicant's [Defendant] arguments relative to the remaining registrations are unpersuasive".
17. In fact, on April 9, 2008, Defendant filed Petitions for Cancellation of Plaintiff's two (2) registrations citing likelihood of confusion NOT against the pending

application, BUT against Defendant's earlier registered marks (US Reg. 1,457,907 and US Reg. 758,037).

Defendant's Earlier Registered Marks

18. Defendant is the owner of US Trademark Reg. 1,457,907 (the '907 registration), registered September 22, 1987, for the word mark SKEETER in International Class 3 for use in association with *boat polish and cleaner*; Class 6 for use in association with *metal key chains*; Class 19 for use in association with *bass boats*; Class 18 for use in association with *tote bags*; Class 21 for use in association with *portable ice chests for food and beverages*; and Class 25 for use in association with *jackets, windbreakers, sweaters, cap, scarves*. (Exhibit 5 attached hereto.)
19. Defendant is also the owner of an earlier registration, US Trademark Reg. 758,037 (the '037 registration) citing a date of first use in commerce of January 5, 1961, registered October 8, 1963, for the mark Skeeter and Design in International Class 19 for use in association with *boats*. (Exhibit 6 attached hereto.)



20. On April 12, 2004, Defendant filed a Declaration of Use and an Application for Renewal of the '037 registration (Skeeter and Design) together with a Petition to Amend Registration with a newly designed drawing, stating a date of first use (of the new drawing) in commerce as December 30, 1960; a date prior to the date of first use in commerce indicated on the original registration of January 5, 1961.



21. On May 25, 2004, Defendant's Renewal Application was accepted.
22. However, on July 9, 2004, the USPTO refused Defendant's Petition to Amend Registration (new drawing) stating that Defendant's new drawing was "a very material alteration of the [registered] mark"; a change in the character and consumer impression of the mark as originally registered, and as not creating the impression of being the same mark.



23. On January 7, 2005, Defendant requested the USPTO reconsider refusing to allow the Defendant's Petition to Amend Registration (new drawing).
24. On July 22, 2005, the USPTO denied Defendant's request for reconsideration and advised recourse was to Petition the Commissioner.
25. Defendant then petitioned the Commissioner of the USPTO to accept the altered mark making the argument that the "modernization of Registrant's [Defendant's] mark is not a material alteration".
26. On January 21, 2006, the Petition to the Commissioner of the USPTO was denied stating "Petitioner [Defendant] has the option to file a new application for the mark in the proposed amendment" (to the '037 registration).

27. On September 12, 2006, Defendant filed a new application to register the “modernization” of Defendant’s ‘037 Skeeter and Design used in association with *boats and structural parts thereof and clothing* (the ‘275 application). (See Exhibit 3 hereto.)
28. This series of refusals to allow or accept Defendant’s application ostensibly resulted in Defendant’s threatening demand letter to Plaintiff (See Exhibit 4) and subsequent Petitions To Cancel Plaintiff’s two (2) registered marks.
29. On May 13, 2008, Defendant’s counsel sent a cease and desist letter demanding Plaintiff cease use of Plaintiff’s two (2) registrations (the ‘646 and ‘253 registrations) on the basis of Defendant’s earlier registered marks (the ‘907 and ‘037 registrations). (Exhibit 7 attached hereto.)
30. Most recently, on May 29, 2008, Defendant’s counsel sent a letter stating Infringement and Unfair Competition of Plaintiff’s use of its two (2) registrations (the ‘646 and ‘253 registrations) on the basis of Defendant’s earlier registered marks (the ‘907 and ‘037 registrations). (Exhibit 8 attached hereto.)
31. Defendant’s threat to file cancellations proceedings against Plaintiff’s two (2) registrations and subsequent filing together with the recently received cease and desist letter unequivocally demonstrate that Defendant’s threats cannot be ignored or dismissed.
32. Thus, Plaintiff has a reasonable fear and apprehension that Defendant will commence an action for trademark infringement against Plaintiff, accordingly Plaintiff is in need of a declaration affirming the legality and propriety of Plaintiff’s rights concerning Plaintiff’s registered trademarks.

33. These accusations and demands give rise to a case of actual controversy within the jurisdiction of this Court pursuant to 28 U.S.C. §§ 2201-02.
34. Plaintiff categorically denies that Plaintiff's use of SKEETA and Design (the '646 and '253 registrations) violates any federal or state rights Defendant might have in SKEETER (the '907 registration) or SKEETER and Design (the '037 registration).
35. Defendant's assertions that Plaintiff is violating Defendant's legal rights by using the mark SKEETA and Design ('646 and '253 registrations) irreparably injures Plaintiff and adversely affects Plaintiff's business and, unless prevented by this Court, will continue to so affect Plaintiff's business and the investment Plaintiff has made in the mark SKEETA and Design and attendant good will.
36. To resolve the legal and factual questions raised by Defendant and to afford relief from the uncertainty and controversy which Defendant's assertion has precipitated, Plaintiff is entitled to a declaratory judgment of Plaintiff's rights under 28 U.S.C. §§2201-02.
37. The use by Plaintiff of the mark SKEETA and Design ('646 and '253 registrations) is not in violation of any rights Defendant might have under the Lanham Act, federal law and/or state unfair competition laws, any state uniform deceptive trade practices, or anti-dilution laws.

WHEREFORE, Plaintiff prays that the Court declare and a judgment be entered that:

1. Plaintiff's mark SKEETA and Design ('646 and '253 registrations) does not violate Defendant's rights under the laws of the United States.

2. Plaintiff's mark SKEETA and Design ('646 and '253 registrations) as used in Plaintiff's business is not confusingly similar to or in conflict with Defendant's marks SKEETER ('907 registration) and/or SKEETER and Design ('037 registration) as used in Defendant's business.
3. Plaintiff has the right to use the mark SKEETA and Design ('646 and '253 registrations), in connection with *tents* (Class 22) and/or *jackets and pants* (Class 25), free from interference by Defendant, its officers, agents, servants, employees, attorneys, privies, representatives, successors, and assigns, and any and all persons acting by, through, or under authority from Defendant, either separately or jointly, in the United States or in any foreign country where the activities of Plaintiff or Defendant have a substantial effect on interstate or foreign commerce.
4. Plaintiff be granted such other, further, and general relief as may be just.

Respectfully submitted,

STEELE T. WILLIAMS, P.A.
3410 Magic Oak Lane
(@ 4647 Fruitville Road)
Sarasota, FL 34232
Ph: (941) 378-1800
Fx: (866) 417-3048
Email: SteeleTWilliams@comcast.net

By: 
FBN: 079995

TRIAL COUNSEL

Int. Cls.: 22 and 25

Prior U.S. Cls.: 1, 2, 7, 19, 22, 39, 42 and 50

United States Patent and Trademark Office

Reg. No. 2,997,646

Registered Sep. 20, 2005

**TRADEMARK
PRINCIPAL REGISTER**

SKEETA

WAYS, DAVID E. (UNITED STATES INDIVIDUAL)
6209 WILLET COURT
BRADENTON, FL 34202

FOR: TENTS, IN CLASS 22 (U.S. CLS. 1, 2, 7, 19, 22, 42 AND 50).

FIRST USE 12-5-1993; IN COMMERCE 12-5-1993.

FOR: JACKETS, AND PANTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 12-5-1993; IN COMMERCE 12-5-1993.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,043,892.

SER. NO. 78-441,248, FILED 6-25-2004.

ELISSA GARBER KON, EXAMINING ATTORNEY

Int. Cls.: 22 and 25

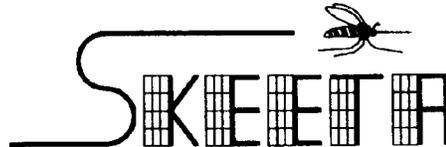
Prior U.S. Cls.: 1, 2, 7, 19, 22, 39, 42 and 50

United States Patent and Trademark Office

Reg. No. 3,015,253

Registered Nov. 15, 2005

TRADEMARK
PRINCIPAL REGISTER



WAYS, DAVID E. (UNITED STATES INDIVIDUAL)
19706 77TH AVENUE EAST
BRADENTON, FL 34202

FOR: TENTS, IN CLASS 22 (U.S. CLS. 1, 2, 7, 19, 22, 42 AND 50).

FIRST USE 12-5-1993; IN COMMERCE 12-5-1993.

FOR: JACKETS, AND PANTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 12-5-1993; IN COMMERCE 12-5-1993.

THE MARK CONSISTS OF THE WORD SKEETA, WITH THE "S" MADE FROM THE FLIGHT OF A MOSQUITO. THE OTHER LETTERS "EETA" ARE COMBINED WITH A GRID THAT REPRESENT NETTING.

SER. NO. 78-441,261, FILED 6-25-2004.

ELISSA GARBER KON, EXAMINING ATTORNEY



United States Patent and Trademark Office

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Word Mark **SKEETER**
Goods and Services IC 012. US 019 021 023 031 035 044. G & S: Boats and structural parts therefor. FIRST USE: 19970831. FIRST USE IN COMMERCE: 19970831

 IC 025. US 022 039. G & S: Clothing, namely, tops, shirts, sport shirts, fishing shirts, windshirts, polo shirts, jerseys, t-shirts, blouses, jackets, sweatshirts, bottoms, pants, sweatpants, waterproof pants, shorts and headwear. FIRST USE: 19970831. FIRST USE IN COMMERCE: 19970831

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 03.23.06 - Bees; Hornets; Wasp; Yellowjackets
 03.23.24 - Stylized insects, spiders and micro-organisms
Serial Number 78972275
Filing Date September 12, 2006
Current Filing Basis 1A
Original Filing Basis 1A
Owner (APPLICANT) **Skeeter** Products, Inc. CORPORATION TEXAS One **Skeeter** Road Kilgore TEXAS 756630230

Attorney of Record Catherine J. Holland
Prior Registrations 0758037;1457907

Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Knobbe Martens Olson & Bear LLP

Intellectual Property Law

2040 Main Street
Fourteenth Floor
Irvine, CA 92614
Tel 949-760-0404
Fax 949-760-9502
www.kmob.com

Catherine J. Holland
949-721-2919
cholland@kmob.com

September 10, 2007

VIA EMAIL AND MAIL

Mr. David E. Ways
SKEETA
19706 77th Avenue East
Bradenton, FL 34202
dew@skeeta.com

Re: Trademark Consent Agreement
Our Client: Skeeter Products, Inc.
Our Reference: SKEET.038T

Dear Mr. Ways:

Further to your telephone conversation with Greg Phillips, we write to you on behalf of Skeeter Products, Inc, a subsidiary of Yamaha Motor Corporation. As Mr. Phillips mentioned, we represent Skeeter Products in connection with its intellectual property matters, including its trademark applications and registrations.

Established in the 1960s, Skeeter Products is well known for its bass fishing boats and corresponding products, including clothing, outerwear, headwear, tote bags, and ice chests. Information regarding Skeeter Products is available at www.skeeterboats.com. In addition, Skeeter Products owns the following United States Trademark Registrations:

Mark	Reg. No.	Reg. Date	Goods	Date of First Use
	0758037	Oct. 8, 1963	Boats in Class 12	Dec. 30, 1960

San Diego
619-235-8550

San Francisco
415-954-4114

Los Angeles
310-551-3450

Riverside
951-781-9231

San Luis Obispo
805-547-5580

Mr. David E. Ways
September 10, 2007
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SKEETER	1457907	Sept. 22, 1987	Bass boats in Class 12.	Jan. 5, 1961
			Tote bags in Class 18.	May 23, 1985
			Portable ice chests for food and beverages in Class 22.	Oct. 8, 1984
			Jackets, windbreakers, sweaters, caps, and scarves in Class 25.	Feb. 1, 1977

Enclosed for your review are printouts from the United States Patent and Trademark Office (“PTO”) database regarding these two federal trademark registrations.

In 1997, Skeeter Products adopted and began to use a redesigned SKEETER logo in connection with its products. The new SKEETER design logo is illustrated to the right. Thereafter, on September 12, 2006, Skeeter Products filed a trademark application for the new SKEETER design logo, which was issued Serial No. 78/972275. The application covers “boats and structural parts therefore,” and “clothing, namely, tops, shirts, sport shirts, fishing shirts, windshirts, polo shirts, jerseys, t-shirts, blouses, jackets, sweatshirts, bottoms, pants, sweatpants, waterproof pants, shorts and headwear” in Classes 12 and 25.



Despite Skeeter Products’ prior registrations for its SKEETER marks and its prior use of the SKEETER mark, the Examining Attorney initially refused registration, citing your federal registrations for SKEETA (Reg. Nos. 2997646 and 3015253). Printouts from the PTO database for your SKEETA registrations are also enclosed.

Enclosed is a draft Consent Agreement for your signature. Please sign and date it and then send it back to us via email or facsimile.

As you will note from the PTO printouts, Skeeter Products’ first use of the mark SKEETER in connection with clothing (February 1977) predates your designated date of first use for the SKEETA mark on clothing (December 1993). Further, Skeeter Products’ registrations for its SKEETER marks predate your SKEETA registrations. Thus, Skeeter’s rights to the SKEETER mark are clearly senior to your rights to the SKEETA mark. Unless you will agree to

Knobbe Martens Olson & Bear LLP

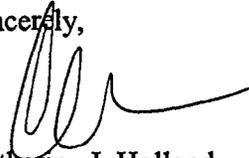
Mr. David E. Ways
September 10, 2007
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sign the enclosed Consent Agreement, or if the Examining Attorney maintains the rejection based on your SKEETA marks, Skeeter Products will have no choice but to file cancellation actions against your SKEETA registrations based on its prior rights in the SKEETER mark. Skeeter Products would prefer to settle this matter amicably, however.

If you have any questions, please contact me or my associate Greg Phillips. We must file a response in the Patent and Trademark Office by **September 21, 2007**, and we would appreciate receiving the signed Consent Agreement before this deadline.

We thank you in advance for your cooperation.

Sincerely,



Catherine J. Holland

Enclosures

cc: Gregory B. Phillips
Lisa McManus

3865783
061107

David E. Ways
SKEETA
19706 77th Avenue East
Bradenton, Florida 34202

Re: U.S. Trademark Application
Mark:



Applicant: Skeeter Products, Inc.
Serial No.: 78/972275
Filed: September 12, 2006

Gentlemen:

I, David E. Ways, registered owner of U.S. Trademark Registration Nos. 2997646 and 3015253 for, respectively, the marks SKEETA and SKEETA and Design ("SKEETA Marks"), both as applied to "jackets, and pants" in Class 25 and "tents" in Class 22, do not object to the use or registration of Skeeter Products, Inc.'s ("Skeeter") SKEETER and Design mark as applied to "boats and structural parts therefore," and "clothing, namely, tops, shirts, sport shirts, fishing shirts, windshirts, polo shirts, jerseys, t-shirts, blouses, jackets, sweatshirts, bottoms, pants, sweatpants, waterproof pants, shorts and headwear" in Classes 12 and 25. I hereby consent to coexist with Skeeter's pending Trademark Application Serial No. 78/972275 in the United States Patent and Trademark Office (USPTO) on the Trademark Register and with respect to Skeeter's actual use in the marketplace.

It is my understanding that the USPTO provisionally refused Skeeter's registration of the SKEETER and Design mark under § 2(d) of the Lanham Act. In light of the differences between the respective marks, the respective channels of trade, and the respective goods of the parties, I believe that there is no likelihood of confusion between the SKEETER and Design mark and the SKEETA Marks.

I confirm that Skeeter is authorized to submit this letter to the USPTO to apprise any Examiner that an objection under § 2(d) involving the SKEETER and Design mark should be withdrawn, since I do not believe that there is any likelihood of confusion by my customers and Skeeter's customers.

Very truly yours,

David E. Ways

Date: _____

4244795
091007

Int. Cls.: 3, 6, 12, 18, 21 and 25

Prior U.S. Cls.: 2, 3, 13, 19, 39 and 51

United States Patent and Trademark Office

Reg. No. 1,457,907

Registered Sep. 22, 1987

**TRADEMARK
PRINCIPAL REGISTER**

SKEETER

SKEETER PRODUCTS, INC. (TEXAS CORPORATION)
2606 HWY 259 NORTH
KILGORE, TX 75662

FOR: BOAT POLISH AND CLEANER, IN CLASS 3 (U.S. CL. 51).

FIRST USE 11-23-1984; IN COMMERCE 11-23-1984.

FOR: METAL KEY CHAINS, IN CLASS 6 (U.S. CL. 13).

FIRST USE 1-17-1985; IN COMMERCE 1-17-1985.

FOR: BASS BOATS, IN CLASS 12 (U.S. CL. 19).

FIRST USE 1-5-1961; IN COMMERCE 1-5-1961.

FOR: TOTE BAGS, IN CLASS 18 (U.S. CL. 3).
FIRST USE 5-23-1985; IN COMMERCE 5-23-1985.

FOR: PORTABLE ICE CHESTS FOR FOOD AND BEVERAGES, IN CLASS 21 (U.S. CL. 2).
FIRST USE 10-8-1984; IN COMMERCE 10-8-1984.

FOR: JACKETS, WINDBREAKERS, SWEATERS, CAPS, SCARVES, IN CLASS 25 (U.S. CL. 39).

FIRST USE 2-1-1977; IN COMMERCE 2-1-1977.

OWNER OF U.S. REG. NO. 758,037.

SER. NO. 616,139, FILED 8-22-1986.

MICHAEL MURPHY, EXAMINING ATTORNEY

United States Patent Office

758,037
Registered Oct. 8, 1963

PRINCIPAL REGISTER Trademark

Ser. No. 158,484, filed Dec. 4, 1962

The logo for the trademark 'Skeeter' features the word 'Skeeter' in a stylized, cursive script. A small, detailed illustration of a dragonfly is positioned above the letter 'S'. The entire word and dragonfly are underlined with a thick, solid black line.

Stemco Manufacturing Company, Inc. (Texas corporation)
Industrial Blvd.
Longview, Tex.

For: BOATS, in CLASS 19.
First use Dec. 30, 1960; in commerce Jan. 5, 1961.
Owner of Reg. No. 570,648.

Knobbe Martens Olson & Bear LLP

Intellectual Property Law

2040 Main Street
Fourteenth Floor
Irvine, CA 92614
Tel 949-760-0404
Fax 949-760-9502
www.kmob.com

Gregory B. Phillips
gregory.phillips@kmob.com

May 13, 2008

VIA EMAIL AND CERTIFIED MAIL

Mr. David E. Ways
SKEETA
19706 77th Avenue East
Bradenton, FL 34202
dew@skeeta.com

Re: Trademark Infringement and Unfair Competition
Infringing Marks and Trade Name: SKEETA and SKEETA and Design
Our Client: Skeeter Products, Inc.
Our Reference: SKEET.046CN/047CN

Dear Mr. Ways:

As you are now aware, Skeeter Products, Inc. ("Skeeter") has filed petitions to cancel your trademark registrations for the marks SKEETA and SKEETA and Design (the "Skeeta Marks"), U.S. Trademark Reg. Nos. 2997646 and 3015253. Skeeter's SKEETER mark and Skeeter Logo (the "SKEETER Marks") predate your SKEETA Marks by numerous years and the Trademark Office has stated that SKEETER and SKEETA are confusingly similar.

Skeeter has learned that your company is using the SKEETA Marks and trade name in connection with boat canopies. Attached is a printout from your website regarding custom netting for boats. This letter is to place you on notice that your use of the SKEETA Marks in connection with boat related goods is an infringement of Skeeter's trademark rights. There is a strong likelihood of consumer confusion in that customers are likely to presume that your business is sponsored by or affiliated with Skeeter, when it is not, or that your use of the SKEETA Marks is authorized by Skeeter, when it is not.

In addition, your use of the SKEETA Marks in connection with boat related goods is a clear act of unfair competition, a violation of both state and common law. Due to Skeeter's longstanding use of the SKEETER mark, its strong reputation in the industry, and our previous conversations, you were obviously aware of Skeeter's rights prior to your use of the mark in connection with boat related goods. As such, your infringement is willful infringement of Skeeter's trademark rights.

San Diego
619-235-8550

San Francisco
415-954-4114

Los Angeles
310-551-3450

Riverside
951-781-9231

Seattle
206-405-2000

Washington, DC
202-640-6400

Mr. David E. Ways
May 13, 2008
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In view of the significant injury to Skeeter occasioned by your use of the SKEETA Marks and SKEETA trade name, Skeeter will vigorously enforce its rights. Accordingly, we insist that you:

1. Cease and desist from all use of the SKEETA Marks, and any other mark or trade name identical or confusingly similar to the SKEETER Marks;
2. Provide written assurances that you will not use or register the SKEETA Marks, or any other mark identical or confusingly similar to the SKEETER Marks;
3. Pay damages to Skeeter for the past infringement; and
4. Pay Skeeter's attorneys' fees and costs incurred in connection with this matter.

Based on our prior discussions, Skeeter is still willing to consider a settlement proposal. No settlement is possible, however, unless Skeeter obtains the enumerated demands set forth above.

Due to the seriousness of this matter, we demand that you provide us with written assurances that you will comply with the requests set forth above by May 27, 2008. If we do not hear from you within this time period, we will assume that you do not intend to comply with these requests and are not interested in an amicable resolution of this matter. Continued non-compliance with these demands may be regarded as further evidence of willful and intentional infringement of Skeeter's rights and may subject you to further legal action and enhanced monetary damages.

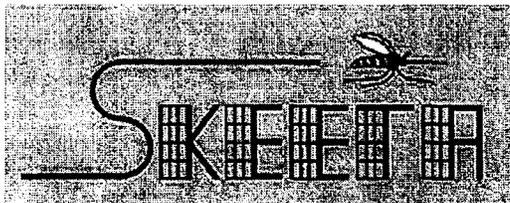
We look forward to receiving your written assurances by May 27, 2008 that you will comply with the above-requests.

Sincerely,



Gregory B. Phillips

Enclosure
Certified Mail: 7007 0710 0000 1569 0847
cc: Catherine J. Holland
Lisa McManus



Custom Net Sewing by Skeeta

Clothing ▾

Canopies ▾

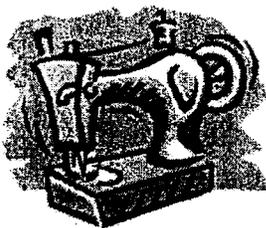
Netting ▾

Tents ▾

Contact Us ▾

Order Form

Let us help you to:



- Custom cut and sew your own design
- Screen in your porch
- Screen in your children's playhouse
- Enclose your patio umbrella
- Boat and boathouse applications
- Restaurant patio screening
- Screen in your aviary to protect your birds from West Nile virus
- Create your own custom bed canopy
- Theater scrim
- Outdoor food stand cover

No-See-Um netting (approx. 625 holes per sq. inch)

54" wide @ \$3.50 per yard

Mosquito netting (156 holes per sq. inch)

84" wide @ \$4.50 per yard

No-see-um netting colors: slate grey, white, light tan, olive green.

Mosquito netting colors: white, ivory, sand

Sewing prices are based on the project complexity.

For the estimates, please contact us at phone/fax (941) 322-9739 with ideas and designs.

Email: skeeta@skeeta.com

19706 77th Avenue East, Bradenton, FL 34202 ~ (941 322-9739) tel/fax ~ skeeta@skeeta.com

Knobbe Martens Olson & Bear LLP

Intellectual Property Law

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Gregory B. Phillips
gregory.phillips@kmob.com

May 29, 2008

VIA EMAIL

Mr. David E. Ways
SKEETA
19706 77th Avenue East
Bradenton, FL 34202
dew@skeeta.com

Re: Trademark Disputes—Cancellation Actions,
Trademark Infringement and Unfair Competition
Cancellation Nos. 92049168 and 92049203
Infringing Marks and Trade Name: SKEETA and SKEETA and Design
Our Reference: SKEET.046CN/047CN

Dear David:

Further to our phone conversation on May 15, 2008, this letter addresses the discovery conference in connection with the cancellation actions and your continued use of the marks SKEETA and SKEETA and Design in light of my letter dated May 13, 2008.

Discovery Conference in Connection with Cancellation Actions

We are available for the discovery conference with you and Ms. Butler, the TTAB Interlocutory Attorney, on June 17, 2008, at 10:00am PST. We need to discuss beforehand the scope of discovery. We are available June 3, 2008, at 10:00am PST to have a telephone conference with you for this discussion.

Please confirm your availability for these conferences.

Continued Infringement of the SKEETER Mark

From our telephone conversation, it is my understanding that you will not comply with the demands Skeeter Products set forth in my May 13, 2008 letter. Please confirm in writing, email or letter, that my understanding is correct.

The infringement and unfair competition issues discussed in my May 13, 2008 letter are separate from the issues in the cancellation actions. The cancellation actions are limited only to the issue of whether your SKEETA marks warrant registration in light of Skeeter Products'

San Diego
619-235-8550

San Francisco
415-954-4114

Los Angeles
310-551-3450

Riverside
951-781-9231

Seattle
206-405-2000

Washington, DC
202-640-6400

Mr. David E. Ways

May 29, 2008

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senior SKEETER registrations. The infringement and unfair competition issues are directed to your use of the SKEETA marks in commerce. Skeeter Products considers your continued use of the SKEETA marks willful and intentional infringement of the SKEETER marks. Skeeter Products reserves the right to seek any and all legal action necessary to remedy the injury caused by your infringing use.

Proposed Settlement

Based on our telephone conversation, it is my understanding that you do not wish to settle the cancellation actions. You mentioned that you wish to go through the cancellation proceedings and see how the Board will rule. If my understanding is not correct, please let me know.

Sincerely,



Gregory B. Phillips

cc: Catherine J. Holland
Lisa McManus