

ESTTA Tracking number: **ESTTA473253**

Filing date: **05/18/2012**

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

Proceeding	91194379
Party	Plaintiff Cornfields, Inc.
Correspondence Address	RICHARD B BIAGI NEAL MCDEVITT LLC 1776 ASH STREET NORTHFIELD, IL 60093 UNITED STATES pto@nealmcdevitt.com
Submission	Motion to Dismiss 2.132
Filer's Name	Richard B. Biagi
Filer's e-mail	rbiagi@nealmcdevitt.com, pto@nealmcdevitt.com, jgodell@nealmcdevitt.com
Signature	/Richard B. Biagi/
Date	05/18/2012
Attachments	2012 motion to dismiss.rbb.20120518.pdf (3 pages)(119058 bytes)

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

In the matter of Trademark Application No. 77/780,921
For the Mark SKINNY MUNCH – Int. Class 30
Filed on July 14, 2009
Published on December 1, 2009

ADEENA WEISS, d/b/a
SKINNY MUNCH CORP.

Applicant/Counterclaim Plaintiff,

v.

CORNFIELDS, INC.,

Counterclaim Defendant.

Opposition No. 91194379

**COUNTERCLAIM DEFENDANT’S MOTION TO DISMISS FOR PLAINTIFF’S
FAILURE TO PROSECUTE UNDER 37 C.F.R. § 2.132(a)**

Pursuant to Trademark Rule 2.132(a), 37 C.F.R. § 2.132(a), Counterclaim Defendant, Cornfields, Inc. (hereinafter “Cornfields”), by and through its counsel, hereby files this timely Motion for Involuntary Dismissal based on Applicant/Counterclaim Plaintiff, Adeena Weiss d/b/a Skinny Munch Corp.’s (“Weiss”), failure to prosecute. In support of its motion, Defendant states as follows:

1. On July 6, 2011, Cornfields, as Opposer in Opposition 91194379, moved the Board to withdraw its opposition.
2. On July 26, 2011, the Board dismissed Cornfields’ Opposition with prejudice.
3. On August 25, 2011, Weiss filed a notice indicating to the Board that she wished to proceed on her Counterclaim.

4. Subsequently, the Board resumed the proceedings in Opposition 91194379 with respect to the Counterclaim and set forth a schedule, including the following relevant dates:
 - A. Defendant's [Weiss], as Plaintiff in the Counterclaim, Pretrial Disclosures due on March 25, 2012;
 - B. Defendant's [Weiss], as Plaintiff in the Counterclaim, 30-day Trial Period Ends on May 9, 2012.
 - C. Plaintiff's [Cornfields], as Defendant in the Counterclaim, Pretrial Disclosures due on May 24, 2012.
5. To date, Weiss has failed to take any testimony whatsoever in this proceeding and has offered no other evidence to support her Counterclaim.

WHEREFORE, Cornfields respectfully moves the Board to dismiss Weiss' Counterclaim and enter judgment against Weiss for failure to prosecute pursuant to Trademark Rule 2.132(a), 37 C.F.R. § 2.132(a).

Dated: May 18, 2012

Respectfully submitted,

/s/ Richard B. Biagi

Richard B. Biagi, Esq.
Jessica J. Godell, Esq.
NEAL & MCDEVITT, LLC
1776 Ash Street
Northfield, IL 60093
(847) 441.9100 (Telephone)
(847) 441.0911 (Facsimile)

Counsel for Cornfields, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **COUNTERCLAIM DEFENDANT'S MOTION TO DISMISS FOR PLAINTIFF'S FAILURE TO PROSECUTE UNDER 37 C.F.R. § 2.132(a)** was served by deposit with the United States Postal Service, First Class, May 18, 2012:

Adeena Weiss
14870 SW 76 Court
Palmetto Bay, FL 33158
adeenajw@aol.com
Correspondent for Applicant

/s/ Richard B. Biagi
One of the Attorneys for Defendant