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

Proceeding	91201937
Party	Plaintiff Sleek Sensation, Ltd.
Correspondence Address	ISRAEL NISSENBAUM 1038 56TH STREET BROOKLYN, NY 11219 UNITED STATES inpdq@hotmail.com, inpdq@yahoo.com
Submission	Other Motions/Papers
Filer's Name	ISRAEL NISSENBAUM
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Signature	/ISRAEL NISSENBAUM/
Date	12/01/2011
Attachments	reconsideration denial.pdf (18 pages)(950088 bytes)

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

-----X		
SLEEK SENSATION, LTD.)	Opposition No. 91201937
)	
Opposer,)	
)	
v.)	
)	
SOFT'N SLEEK, INC.)	
)	
Applicant.)	
-----X		

**OPPOSER'S RESPONSE TO APPLICANT'S REQUEST FOR
RECONSIDERATION**

Opposer, SLEEK SENSATION, LTD., by and through the undersigned counsel, responds to Applicant's Request for Reconsideration as follows:

1. No new credible issues of fact have been asserted beyond those initially asserted in Applicant's initial Motion to Dismiss and which the TTAB has denied. There is no justiciable basis for reconsideration and the request should be denied.
2. Applicant's entire basis for the initial Motion to Dismiss and this Request for Reconsideration is predicated on the assertion that Applicant did not participate or was not involved in the religious court (akin to an arbitration and characterized as such) proceeding, the decision of which was the basis for the second request for an extension of time to institute an Opposition.
3. The attached EXHIBIT A is a current download from the NYS Department of State of information with respect to the incorporation information of Applicant, SOFT'N SLEEK INC. There is no registered agent or any information regarding the names and addresses of officers, shareholders or directors or chief executive officer of the corporation.
4. The entire file for the opposed mark SOFT 'N SLEEK, serial no. 85036238 has no full name of any attorney or signator for Applicant on any paper filed therein. In a paper filed September 5, 2011, the email address: davidlipsker@gmail.com officially appears therein.
5. A "cease and desist" letter, EXHIBIT B, was sent to Applicant by Opposer's attorneys Collard & Roe, P.C. including a demand that Applicant cease using the mark SOFT 'N SLEEK and to withdraw its trademark application therefore. The letter was sent by certified mail and was received by Applicant. No response or acknowledgement was made by Applicant with respect to the letter.

6. The same letter was submitted in the above mentioned religious court and, as is evident from the attached EXHIBIT C, of an email submission, it was parsed and answered in detail and sent by the email: davidlipsker@gmail.com to the rabbinical court. At the very least, an appearance by Applicant in the arbitration, can be imputed from such response. In the absence of any name (attorney or officer) of anyone representing Applicant, the email name is a reasonable source as an identification indication of a representative of Applicant.
7. The same email of davidlipsker@gmail.com is of record in the present proceeding as the address for correspondence herein.
8. Opposer was fully and reasonably entitled to assume that Applicant was a part of the rabbinical court proceeding, as a basis for requesting a second extension of time to resolve matters. Opposer has provided no evidence, aside from unsubstantiated statements regarding whether it participated in the rabbinical proceeding. Furthermore, even if Applicant is not bound by the arbitration, Opposer was reasonably entitled to assume that it was, as justification for the request for extension to oppose.
9. Opposer, by the granting of the second extension of time to oppose, has not been harmed or damaged at all, than if the opposition had been filed in lieu of the request for extension of time.


Based on the above, Opposer respectfully requests that the request for reconsideration be denied forthwith.

By: 

Israel Nissenbaum
Attorney for Opposer
Sleek Sensation, Ltd.
1038 56th Street
Brooklyn, NY 11219
Telephone: 718 344 4406
Fax: 718 633 7032
inpdq@hotmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the OPPOSER'S RESPONSE TO APPLICANT'S REQUEST FOR RECONSIDERATION has been served on M. Shneerson of Soft'N Sleek at 719 Eastern Parkway, Suite 3, Brooklyn, NY 11213, on this 1st day of December, 2011, by first class mail.



Israel Nissenbaum

EXHIBIT A**NYS Department of State****Division of Corporations****Entity Information**

The information contained in this database is current through November 30, 2011.

Selected Entity Name: SOFT'N SLEEK INC.

Selected Entity Status Information

Current Entity Name: SOFT'N SLEEK INC.

Initial DOS Filing Date: MAY 11, 2010

County: KINGS

Jurisdiction: NEW YORK

Entity Type: DOMESTIC BUSINESS CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

ASSOCIATED BUSINESS CONSLT
719 EASTERN PK ST3
BROOKLYN, NEW YORK, 11213

Registered Agent

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by viewing the certificate.

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
200	No Par Value	

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
MAY 11, 2010	Actual	SOFT'N SLEEK INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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Edward G. Roe (1902 - 1977)

Kurt Kelman (1919 - 2008)
Patent Agent

Of Counsel
Allison C. Collard
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E-mail sbellus@collardroe.com

April 12, 2011

Soft 'n Sleek, Inc.
719 Eastern Parkway, Suite 3
Brooklyn, NY 11213

Re: Trademark Infringement, Unfair Competition, and Trade Dress Infringement of Intellectual Property Owned By Sleek Sensation, Ltd.

To Whom It May Concern:

We are special trademark counsel to Sleek Sensation, Ltd. As you are well aware, our client is the owner of the mark SLEEK SENSATION for use in connection with baby wipes and related products. Our client also is the owner of U.S. Trademark Registration No 3,214,545. Due to extensive use and promotion, our client's SLEEK SENSATION mark has become very well known in the field. Moreover, its packaging has become extremely recognizable to relevant consumers.

It has come to our attention that your company is selling baby wipes under the trademark SOFT 'N SLEEK, and doing so in packaging that is extremely similar to our client. This marketing activity constitutes a) trademark infringement, b) unfair competition, and c) trade dress infringement.

Initially, use of the mark SOFT 'N SLEEK constitutes trademark infringement because the mark is similar to our client's well known registered mark SLEEK SENSATION. Both marks contain the word SLEEK, and are used on baby wipes. As a result, consumers are likely to be confused and misled.

In addition, your use of the mark and packaging constitutes unfair competition. Consumers familiar with our client's mark and package will see your package and believe it comes from our client. There is no justification for you to trade on good will created by our client.

Finally, your marketing activities constitute trade dress infringement. The overall look of your packaging is very similar to the packaging of our client, and consumers who buy these inexpensive, off the shelf items, easily will confuse the packages. Here are a few specific reasons why:

1. Both packages contain the work SLEEK in relatively large letters.

2. Both packages place the trademarks inside a noticeable shape (our client uses a heart, your company uses a cloud, but the overall impression is similar).
3. Both packages contain the term BABY WIPES in noticeable letters in alternating colors.
4. Immediately above the term BABY WIPES, both packages include an animal shown in a cartoon-like form.
5. Both packages show a crawling baby on the left side.
6. Both packages surround the crawling baby with a circle, our client's design in the shape of a cloud (which you have copied behind your SOFT 'N SLEEK trademark), and your packaging in a more regular circle. However, on both packages, these babies are highlighted on a white background.
7. In the center front panel of both packages there are three vertical "bullet" points with the identical words "alcohol free," "hypoallergenic", and "dermatologically tested." Underneath those three bullets, the sheet size, need to reseal, and instructions to "store at room temperature" are identical.
8. On the top and bottom panels of each package, the layout and format are identical. In both packages, trademarks including the term SLEEK are surrounded by logos; a crawling baby is on a white background, surrounded by a circle-like shape; the term BABY WIPES is presented in colorful block letters, next to a small animal. These panels also contain the identical bullet points under the main trademark: "VITAMIN E" and "ALOE VERA."
9. The back panels of both packages also are identical: The trademark containing the word SLEEK is on the top left, immediately next to the identical phrase, "BABY WIPES ARE CAREFULLY FORMULATED AND POSSES SOME NOTABLE PROPERTIES." Beneath that there are four points. Again, the four points listed on both packages are identical.
10. Also on the back panel of both packages, five symbols are shown horizontally. The symbols on both packages are identical. The copying is so blatant that your package actually copies an original graphic image contained in the box indicating that the product is "permissible for Shabbots use." Moreover, our client asserts that your product may not meet the requirements for that designation.

Our client is not trying to stop you from selling products or competing in an honest way. However, our client does object to improper copying of its trademark and package design. While you certainly can point to some small differences between the packages, the overall look is very

Sleek 'n Soft, Inc.
April 12, 2011
Page 3

similar.

Finally, we note that your company has filed an application to register the mark SOFT 'N SLEEK at the U.S. Patent & Trademark Office ("PTO"). To date, the PTO has not allowed your application. However, if it does, our client intends to file an opposition. In other words, our client will not permit your company to register its mark when your client continues to act in bad faith.

Based on all the above, our client must insist that you take the following steps:

1. Immediately stop selling all products in your current SOFT 'N SLEEK packaging.
2. Immediately remove all packages already in stores.
3. Immediately stop using the trademark SOFT 'N SLEEK.
4. Withdraw the application for registration on file at the US Patent and Trademark Office..

We look forward to hearing from you soon so that this matter does not become unnecessarily complicated.

Sincerely,

COLLARD & ROE, P.C.



Stewart J. Bellus

SJB/lok
Enclosure

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Fw: Fwd: soft sleek reply

EXHIBIT C

From: **SLEEK SENSATION** (sleeksensation@yahoo.com)
Sent: Thu 12/01/11 3:23 PM
To: Israel Nissenbaum patent and trademark attorney (inpdq@hotmail.com)

----- Forwarded message -----

From: **Rabbi Perlman** <rabbi@badatz.net>
Date: Sun, Jun 5, 2011 at 7:09 PM
Subject: Fwd: soft sleek reply
To: gsternd@aol.com, Isaac Miller <ymhmiller@yahoo.com>

----- Forwarded message -----

From: **david lipsker** <davidlipsker@gmail.com>
Date: Sun, Jun 5, 2011 at 12:35 PM
Subject: Fwd: soft sleek reply
To: rabbi@badatz.net

NATIONAL TRADEMARKS CENTER'S REPLY

TO PLAINTIFF'S COUNSEL'S RESPONSE

Response is in BLUE CAPS

Collard & Roe, P.C.

Patent, Trademark & Copyright Attorneys
1077 Northern Boulevard
Roslyn, New York 11576-1696

Telephone: (516) 365-9802
Facsimile: (516) 365-9805

May 24, 2011

Via Email:

RABBI@BADATZ.NET Dear Rabbi Perlman, Rabbi Stem, and Rabbi Miller,
I represent Sleek Sensation, Ltd. and have been asked to provide an opinion on whether there is a likelihood of confusion between the trademarks SLEEK SENSATION and SOFT 'N SLEEK. Both marks are used in connection with wipes for babies. As background, I have specialized in trademark law for many years. First, I was a trademark examiner at the U.S. Patent and Trademark Office ("PTO") from 1982-1987. After that government service, I have been in private practice since 1987, and have filed and prosecuted several thousand trademark applications in the PTO.

AS A FORMER TRADEMARK EXAMINER, THIS ATTORNEY KNOWS VERY WELL OR SHOULD KNOW WELL, THAT BOTH MARKS ARE FOR BABY WIPES AS STATED BY THIS VERY ATTORNEY. AS A FORMER TRADEMARK EXAMINER WITH THE PATENT OFFICE HE KNOWS OR SHOULD KNOW THAT THE PATENT OFFICE EXAMINING ATTNY HAS EXAMINED 177 MARKS WITH THE WORD SLEEK -- INCLUDING SLEEK SENSATION AND HAS FOUND NO CONFUSION. IF THE PTO THOUGHT THERE WOULD BE A LIKELIHOOD OF CONFUSION THEY WOULD NOT HAVE ALLOWED AND APPROVED SOFT N' SLEEK FOR REGISTRATION AS THEY DID.

In my opinion, there is a likelihood of confusion between the marks SLEEK SENSATION and SOFT 'N SLEEK used in connection with nearly identical types of products. Before discussing the merits of this specific dispute, there are several preliminary points raised by the attorney for Soft 'N Sleek that should be addressed. I will be referring to the "TMEP" ("Trademark Manual of Examining Procedure"), which is the official PTO manual for examination of trademarks:

THE ATTORNEY FOR SLEEK SENSATION IS NOT A TRADEMARK EXPERT. HE IS, WITH ALL DUE RESPECT, A TRADEMARK ATTORNEY AND NOT A PROFESSIONAL TRADEMARK EXPERT, EQUIPPED TO RENDER AN OPINION ON THE PERCEPTIONS OF THE COMMERCIAL IMPRESSIONS THE 2 MARKS HAVE ON THE AVERAGE PURCHASER OF THESE PRODUCTS.
1) HE IS NOT AN AVERAGE CONSUMER
2) HE IS NOT A PSYCHOLOGIST SPECIALIZING IN CONSUMER PSYCHOLOGY OF THE MARKET PLACE, AND,
3) HE IS, AGAIN, NOT A TRADEMARK EXPERT QUALIFIED TO RENDER SUCH OPINIONS.

THIS CASE TURNS ON LIKELIHOOD OF CONFUSION. AND

LIKELIHOOD OF CONFUSION IS A QUESTION OF FACT, AND NOT A QUESTION OF LAW.
THEREFORE ATTORNEYS LIKE THAT OF SLEEK SENSATION, ARE AT BEST ABLE TO RENDER OPINIONS ON THE LAW ONLY.

1. Counsel for Soft "N Sleek refers to other marks on file at the PTO. However, prior rulings of the PTO are not relevant in any way, as each situation must be decided based on its own, independent facts. As stated in TMEP Section 1207.01(d)(vi):

Prior Decisions of Examining Attorneys

Each case must be decided on its own merits. Previous decisions by examining attorneys in approving other marks are without evidentiary value and are not binding.

PRIOR RULINGS ARE RELEVANT. JUST LIKE IN COURT, PRIOR RULINGS CONSTITUTE "CASE LAW". IS COUNSEL FOR SLEEK SENSATION ARGUING THAT CASE LAW IS NOT RELEVANT?

THE APPROVAL OF SOFT N' SLEEK WAS DECIDED ON ITS OWN MERIT. SOFT N' SLEEK WAS COMPARED BY THE EXAMINING ATTORNEY AT THE PATENT OFFICE WITH SLEEK SENSATION AND OTHER SLEEKs, AND DETERMINED THAT THERE WAS NO LIKELIHOOD OF CONFUSION. SLEEK SENSATION'S COUNSEL, WHO HAS HIMSELF BEEN AN EXAMINING ATTORNEY AT THE PTO KNOWS THIS TO BE TRUE, YET ARGUES THAT THIS CASE MUST BE DECIDED ON "ITS OWN MERITS".
WELL, IT WAS.

In addition, while there may be other marks containing the term SLEEK at the PTO, *none* of those marks are used specifically with baby wipes. For that reason, none of those other marks are relevant to the dispute here.

THOSE MARKS ARE RELEVANT. THEY ARE RELEVANT BECAUSE SLEEK SENSATION IS REGISTERED FOR GOODS OTHER THAN BABY WIPES. FOR THOSE OTHER GOODS THERE WERE PRIOR REGISTRATIONS OR APPLICATIONS REGISTERED TO OR APPLIED FOR TO OTHERS WHICH INCLUDED THE WORD SLEEK. YET THE PATENT OFFICE ALLOWED SLEEK SENSATION TO REGISTER FOR THE OTHER GOODS NOTWITHSTANDING THAT OTHERS HAD APPLIED FOR PREVIOUSLY OR HAD ALREADY REGISTERED FOR THOSE SAME OTHER GOODS.
THEREFORE THOSE MARKS ARE VERY RELEVANT IN SHOWING THAT THE PATENT OFFICE DOES NOT CONSIDER THE WORD SLEEK TO BE THE EXCLUSIVE PROPERTY OF ANY ONE COMPANY,

2. Counsel for Soft 'N Sleek discusses "classification" of marks at the PTO. However, the TMEP makes clear that classification is only for

administrative purposes. The question of likelihood of confusion between two marks depends entirely on the specific goods involved, as indicated by TMEP Section 1207.01(d)(v):

Classification of Goods/Services

The classification of goods and services has no bearing on the question of likelihood of confusion. Rather, it is the manner in which the applicant and/or registrant have identified their goods or services that is controlling.

COUNSEL FOR SLEEK SENSATION IS CORRECT ON THIS POINT. CLASSIFICATION NUMBERS HAVE NO BEARING. IN THIS CASE THE PATENT OFFICE LOOKED AT SOFT N' SLEEK FOR SANITARY WIPES WHICH INCLUDES AND SUBSUMES BABY WIPES, AND COMPARED IT TO SLEEK SENSATION, WHICH INCLUDES THE SAME PRODUCT, AND CONCLUDED THAT THERE IS NO LIKELIHOOD OF CONFUSION, THEY ARE PRESUMED BY LAW TO CONSTITUTE THE EXPERTS. COUNSEL FOR PLAINTIFF SUGGESTS THAT THEY DON'T KNOW WHAT THEY ARE DOING.

As an aside, the only reason the PTO placed Soft 'N Sleek's application in class 5 is that the application described the goods as "sanitary wipes." This created the wrong impression that Soft 'N Sleek's product is medically-related, as class 5 contains goods such as dietary supplements, antibiotics, first aid kits, pharmaceuticals, etc. If Soft 'N Sleek had identified its product accurately as "baby wipes," the PTO would have placed that product in class 3, the same as the classification for SLEEK SENSATION (class 3 is where personal care items such as soaps, shampoos, and cleaners are classified).

WE DONT NEED ANY ASIDES. THIS IS A SERIOUS CASE OF A PLAINTIFF ATTEMPTING TO MONOPOLIZE ALL MARKS FOR WIPES THAT CONTAIN THE WORD SLEEK, AFTER THE PATENT OFFICE DECIDED THAT IT IS NOT THE CASE.

3. All doubt in a dispute between the owner of a registration and a newcomer using a similar mark must be resolved *in favor of the registrant* (here, the "registrant" is the owner of SLEEK SENSATION). As stated in TMEP Section 1207.01(d)(i):

Doubt Resolved in Favor of Registrant

COUNSEL FOR PLAINTIFF IS CORRECT. WITH THIS CORRECTNESS HE SHOOTS HIS CASE IN THE FOOT. IT IS TRUE THAT IF THE PATENT OFFICE HAS ANY DOUBT, THEY NEED TO RESOLVE IT IN FAVOR OF REGISTRANT. BUT, HERE, IN THIS CASE, THEY SAW NO DOUBT AND THEREFORE DECIDED TO "RESOLVE" IN FAVOR OF GRANTING DEFENDANT SOFT N' SLEEK A REGISTRATION. COUNSEL FOR PLAINTIFF IS PROVING

DEFENDANT'S CASE.

If there is any doubt as to whether there is a likelihood of confusion, that doubt must be resolved in favor of the prior registrant.

THIS IS CORRECT. BUT AGAIN, THE PATENT OFFICE EXAMINED PLAINTIFF'S MARK AGAINST DEFENDANT'S MARK AND FOUND NO DOUBT AS TO LIKELIHOOD OF CONFUSION AND APPROVED DEFENDANT'S MARK FOR REGISTRATION.

4. Opposing counsel indicates that the PTO examiner has allowed the mark SOFT 'N SLEEK. Initially, the mark has *not* yet been published for opposition, so it is not certain that the mark actually will be allowed by the examining section of the PTO.

THE MARK SOFT N' SLEEK HAS BEEN ALLOWED FOR PUBLICATION AND REGISTRATION

More importantly, this preliminary allowance does not mean that a registration will issue. The PTO has an established procedure called an Opposition where outside parties have a chance to challenge new applications (Sleek Sensation will file such an opposition later, if necessary).

Every opposition involves an application that has been allowed by an examiner, which is the exact reason the opposition procedure exists. Here is the relevant excerpt from TMEP Section 503.01:

Filing a Notice of Opposition

Any person who believes that he or she would be damaged by the registration of a mark on the Principal Register may oppose registration by filing a notice of opposition with the Board, within thirty days after the date of publication.

THIS DEMONSTRATES TO THE BADATZ WHO PLAINTIFF REALLY IS. PLAINTIFF THREATENS THAT IF THE RULING OF THE DIN TORAH IS NOT IN HIS FAVOR, AS HE ALREADY SUSPECTS, THEN HE WILL TURN TO SECULAR COURTS OR AUTHORITIES BY FILING OPPOSITION PROCEEDINGS. THIS THREAT IN ITSELF CONSTITUTES UNCLEAN HANDS OR UNCLEAN ATTITUDE.

Therefore, *nothing* that has occurred at the PTO should matter to this Council's ruling. Instead, this Council should focus on the specific facts of what Soft 'N Sleek is attempting to do by selling nearly identical products using similar packaging and a similar trademark to those of Sleek Sensation.

THIS IS SERIOUSLY WRONG. COMING FROM AN ATTORNEY WHO KNOWS THAT DECISIONS TO REGISTER -- BY THE PTO --, ARE GIVEN GREAT WEIGHT BY THE FEDERAL COURTS. IF COUNSEL FOR PLAINTIFF WOULD STATE IN A COURT PLEADING SOME OF THE THINGS HE IS STATING HEREIN, HE MIGHT BE

SANCTIONED UNDER RULE 11,

Turning to the substance of this dispute, here is a list of the most relevant factors to determine whether consumers will be confused, as described in TMEP Section 1207.01:

- A) The relatedness of the goods or services
- B) The similarity or dissimilarity of the marks.
- C) The similarity or dissimilarity of trade channels.
- D) The conditions under which buyers make purchases, i.e., "impulse" vs. careful, sophisticated purchasing.

I will address each factor individually:

A) The goods of each party are *identical*: sanitary baby wipes.

B) "Similarity or marks" refers to the *general* impression made on consumers. As stated in TMEP Section 1207.01:

The test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison, but whether the marks are sufficiently similar that there is a likelihood of confusion as to the source of the goods or services.

THE PATENT OFFICE ALREADY RULED THAT THERE IS NO
LIKELIHOOD OF
CONFUSION.

Here, the general impression of SLEEK SENSATION and SOFT 'N
SLEEK is similar.

THIS IS SIMPLY NOT TRUE. IT IS ONLY A SELF SERVING
STATEMENT MADE IN
THE HOPE THAT THOSE WHO READ IT WILL NOT UNDERSTAND
THE DIFFERENCE.
IT IS THE PLAINTIFF'S ATTORNEY'S VALLIANT EFFORT TO HAVE
THE DIN TORAH SECOND GUESS THE REAL EXPERTS AT THE
PATENT OFFICE

In addition, the more similar the goods, the less similar the marks have to be to cause confusion. As stated in TMEP Section 1207.01(b): "Where the goods of two parties are identical, the degree of similarity between marks necessary to support a conclusion of likely confusion declines." Stated differently, for identical products, if the marks are similar in any way, confusion is likely.

THE MARKS ARE NOT SIMILAR, NOTWITHSTANDING ONE COMMON
COMPONENT.
THE PTO HAS ALREADY RULED SO.

Here, the goods of both parties are identical,

THIS IS CORRECT

so consumers are more likely to be confused by any similarities between marks.

THE MARKS ARE NOT SIMILAR, NOTWITHSTANDING THE ONE COMMON WORD SLEEK.

In this situation, both marks contain SLEEK. In the Orthodox Jewish community where SLEEK SENSATION is sold, consumers refer to the product as SLEEK.

THIS IS A STATEMENT WITHOUT EVIDENTIARY PROOF. EVEN IF SOME PEOPLE CALL PLAINTIFF'S PRODUCT SLEEK - AND THERE IS NO PROOF THAT THIS IS THE CASE - IT IS NOT CONTROLLING AT ALL FOR THE OUTCOME OF THE DIN TORAH

Some people already have been confused.

SOME PEOPLE'S CONFUSION, EVEN IF TRUE, IS NOT WHAT IS CONTROLLING. THE TEST OF INFRINGEMENT, AS PLAINTIFF CHARGES, IS LIKELIHOOD OF CONFUSION OF THE AVERAGE CONSUMER WITH AVERAGE INTELLIGENCE, IN THE RELEVANT CHANNELS OF TRADE

Moreover, the other side's addition of the word SOFT, which merely describes a desirable quality of baby wipes, does not negate similar use of SLEEK.

IT DOES. THE WORD SLEEK IS VERY DILUTED, AND, IS GIVEN LITTLE WEIGHT BY CONSUMERS AND WAS GIVEN NO WEIGHT IN THE PATENT OFFICE. IN THIS PARAGRAPH PLAINTIFF'S COUNSEL IS SAYING SOMETHING DIFFERENT THAT HE STATED EARLIER. HE STATED EARLIER THAT THE MARKS HAVE TO BE EVALUATED IN THEIR ENTIRETY -- WHICH IS TRUE. YET HERE HE STATES THAT THE ADDITION OF THE WORD SOFT MAKES NO DIFFERENCE

In short, these marks are similar enough to confuse the public, especially when used for baby wipes.

THIS IS A SELF SERVING CONCLUSION NOT SUPPORTED THROUGH EVIDENCE

C) "Channels of Trade" refers to the location and types of stores in which products are sold, as well as likely purchasers. Here, both parties sell in *identical* channels of trade to *identical* categories of consumers. This increases the likelihood of many consumers being confused.

THE STORES AND CONSUMERS ARE NOT NECESSARILY THE SAME. THERE IS NO RELEVANCE TO THE CHANNELS OF TRADE COMPONENT OF THE ANALYSIS, SINCE THE MARKS ARE NOT SIMILAR ENOUGH TO REQUIRE ANALYZING THE CHANNELS OF TRADE. THE PATENT OFFICE TOOK ALL THIS INTO CONSIDERATION WHEN IT APPROVED DEFENDANT'S SOFT N' SLEEK

D) Baby wipes are inexpensive items that consumers buy "on impulse" (meaning that customers do not take a great deal of time to scrutinize packaging, as they would if they were buying high priced items). As purchases are made quickly without much analysis, the similar packaging and use of SLEEK is likely to mislead consumers.

THE WIPES ARE NOT SO INEXPENSIVE. THE YIDDIN WHO PURCHASE THESE PRODUCTS ARE NOT AS UNINTELLIGENT AS PLAINTIFF'S COUNSEL WOULD HAVE US THINK. THEY ARE WISE ENOUGH TO SEE THAT SLEEK SENSATION AND SOFT N' SLEEK IN THEIR DIFFERENT PACKAGINGS ARE NOT THE SAME COMPANY. WE NEED TO GIVE THEM A LITTLE CREDIT

In a desperate attempt to justify his client's unjustifiable copying, counsel for Soft 'N Sleek refers to "anti-trust" laws that prevent *inappropriate* attempts to limit competition. However, anti-trust laws never have applied to legitimate attempts to protect a party's trademark or trade dress. If those laws did apply, then everyone could copy from everyone else with impunity. That certainly cannot be the case, as it would make the concept of trademarks and trade dress meaningless. Therefore, the claim of anti-trust violations in this situation is without any merit. Here, Sleek Sensation is not being anti-competitive, and clearly recognizes the right of competitors to do business fairly. However, Sleek Sensation does have the right to protect its brand identity and protect consumers from being misled about the product they are purchasing.

HERE IN THIS PARAGRAPH PLAINTIFF'S COUNSEL IS SIMPLY MISSTATING LAW AND CASE LAW.

THE ASSERTION OF TRADEMARK RIGHTS IN A TERM WHICH IS FREE FOR OTHERS TO USE -- SUCH AS HERE THE TERM SLEEK -- IS A VIOLATION OF THE ANTI-TRUST LAWS. IN FACT IT WAS RECOGNIZED LONG AGO THAT TRADEMARK TERMS CAN SOMETIMES BE USED IN VIOLATION OF ANTI-TRUST LAWS. THE LANHAM ACT WHICH INCLUDE THE TRADEMARK LAWS HAVE A

SPECIFIC
PROVISION WHICH ALLOWS FOR THE CANCELLATION OF ANY
TRADEMARK SUCH AS SLEEK SENSATION, IF USED IN VIOLATION
OF THE ANTI-TRUST LAWS,
SUCH AS IN THIS CASE ATTEMPTING TO CUT OFF COMPETITON
THROUGH ITS
ASSERTION OF EXCLUSIVE RIGHTS IN THE TERM SLEEK -- WHICH
IS FREE TO
USE IN COMPETITION

Finally, "bad faith" is an equitable factor that always should be considered. Here, the SOFT 'N SLEEK package is similar in so many ways to the packaging of SLEEK SENSATION that the design cannot be a coincidence. Instead, Soft 'N Sleek is attempting to trade on the reputation and good will created by Sleek Sensation, including selection of a trademark containing SLEEK. Other than the SLEEK SENSATION mark, there are *no* other SLEEK marks registered for baby wipes, so the only conclusion to be drawn, is that Soft 'N Sleek intentionally copied SLEEK SENSATION.

Based on the above, and in order to comply with relevant laws, Soft 'N Sleek's wrongful acts should be punished by this Council ordering that Soft 'N Sleek a) change its trademark to wording not containing SLEEK; b) modify its packaging to remove elements similar to those of Sleek Sensation; c) remove items from stores in which SOFT 'N SLEEK items currently are being sold; d) withdraw its application to register the trademark SOFT 'N SLEEK at the PTO; and e) take whatever other actions are necessary to eliminate any possible confusion with SLEEK SENSATION.

HERE IN THIS PARAGRAPH COUNSEL FOR PLAINTIFF IS CROSSING
THE LINE OF
ETHICS. HE MAKES UNFOUNDED SELF SERVING CONCLUSIONARY
STATEMENTS
WHICH ARE SLANDEROUS.
IT IS NOT WRONGFUL FOR DEFENDANT TO HAVE ADOPTED SOFT
N' SLEEK.
ITS ONLY INTENTION WAS TO ENTER THE COMPETITIVE MARKET
OF WIPES.
THE PATENT OFFICE AGREES WITH DEFENDANT.
ALTHOUGH WE UNDERSTAND PLAINTIFF'S COUNSEL DESIRE TO
JUSTIFY HIS FEES
WE FAIL TO UNDERSTAND HIS WILLINGNESS TO MAKE
SLANDEROUS UNFOUNDED STATEMENTS AS TO THE STATE OF
MIND OF DEFENDANT.
IN SECULAR COURTS IT WOULD CONSTITUTE A SANCTIONABLE
VIOLATION OF THE RULES.

Sincerely,

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