

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA



10-25-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

SKIPPY, INC.)
8304 Tobin Road, Apt. 14)
Annandale, VA 22003)

Plaintiff,)

v.)

Civil Action No. 02-1227-A

LIPTON INVESTMENTS, INC.)
501 Silverside Rd.)
Wilmington, DE 19809)

Defendant)

COMPLAINT PURSUANT
TO 15 U.S.C .1071(b) FOR
ADJUDICATION OF TRADEMARK
CANCELLATION PETITION
WRONGFULLY DISMISSED BY
U.S. PATENT AND TRADEMARK
OFFICE

1. This Court has jurisdiction of this action under the provisions of 15 U.S.C. Sections 1071(b) and 1121(a) (Sections 21b and 39a, respectively of the Lanham Act) and 28 U.S.C. 1338 (a).

2. Venue over the defendant is properly laid in this District under 28 U.S.C. 1391 (c).

3. Plaintiff Skippy, Inc. is a corporation of the State of Delaware with a place of business in this judicial district and division at 8304 Tobin Road, Apt. 14 Annandale, VA 22003.

4. Defendant Lipton Investments, Inc. (hereinafter "Lipton" is a corporation of the state of Delaware with a place of business at 501 Silverside Road, Wilmington, DE 19809,

and is, on information and belief, doing business in this judicial district and division by selling and offering to sell products, including but by no means limited to products that are marked with the trademark "Skippy" allegedly covered by Trademark Registration 504, 940, the validity of which was challenged in the administrative proceeding sought to be reviewed herein. Lipton is the current owner of record of all right, title, and interest in Trademark Registration No. 504,940 which was assigned to it on January 11, 2002 by Conopco Inc. a related corporation, which in turn acquired all right, title, and interest in said registration on October 22, 2001 from Bestfoods, Inc., also a related corporation. Bestfoods, Inc. resulted from a merger of Best Foods Company with CPC International, Inc. and it acquired the entire right, title, and interest in said trademark registration by virtue of said merger, on November 18, 1998. Trademark Registration 504, 940 is the subject of U.S. Patent Office Trademark Cancellation Proceeding No. 32,070, the administrative proceeding sought to be reviewed pursuant to 15 U.S.C. 1071(b) in this action.

5. Trademark Cancellation No. 32,070 was initiated by the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office on August 10, 2001 based on a Petition to Cancel filed by Plaintiff on May 7, 2001.

6. On June 18, 2002 this cancellation proceeding was wrongfully dismissed by the same Board "with prejudice" without any consideration of, much less a decision on, the merits of the issues raised, and on grounds of res judicata that are not legally sustainable.

7. Plaintiff accordingly seeks a full and fair consideration of the issues raised in its Petition to Cancel, a true copy of which with exhibits is appended hereto, and of the facts that are germane to these issues, which have not heretofore been considered on their merits in any

tribunal.

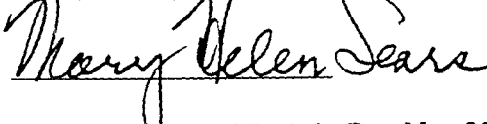
Wherefore, Plaintiff prays that this Court, after full consideration,

a) declare Trademark Registration No. 504,940 cancelled and void, and

b) award to Plaintiff such other and further relief as may be just and proper in all the premises.

Respectfully submitted,

SKIPPY, INC. , Plaintiff

By 

Mary Helen Sears, Virginia Bar No. 08043

Counsel for Plaintiff

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October 24, 2002

Honorable Members of the Trademark Trial and Appeal Board
% Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

02/17/18
10-25-2002
U.S. Patent & TMO/TM Mail Dept Dt. #77

Dear Board Members,

This letter has the purpose, pursuant to 37 C.F.R.2.145(c)(4) of notifying the Board that a civil action seeking judicial review of the decision dated June 18, 2002 dismissing Cancellation Proceeding 32,070 on the grounds of res judicata was filed on Monday, August 19, 2002 in the U.S. District Court for the Eastern District of Virginia pursuant to 15 U.S.C. 1071(b) and 372.145(d). The civil action is identified as No. 02-1227-A on the Court docket.

I sincerely apologize that this communication was not sent by September 18, 2002 as 37 C.F.R. 2.145(c) provides that it "should" be. I hope that "premature termination of the Board proceeding", the possible consequence of delayed compliance stated in the rule, has not yet occurred.

A courtesy copy of the complaint as filed, but without its sole exhibit, the cancellation Petition in No. 32,070, is transmitted herewith.

Yours respectfully,

Mary Helen Sears
Mary Helen Sears

Counsel for Petitioners

02/17/18 AM 6:45
U.S. Patent & TMO/TM Mail Dept Dt. #77

MHS:csd