

ESTTA Tracking number: **ESTTA203775**

Filing date: **04/09/2008**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Skeeter Products, Inc.		
Entity	Corporation	Citizenship	Texas
Address	One Skeeter Road Kilgore, TX 75663 UNITED STATES		

Attorney information	Gregory B. Phillips Knobbe, Martens, Olson & Bear LLP 2040 Main Street 14th Floor Irvine, CA 92614 UNITED STATES efiling@kmob.com Phone:(949) 760-0404		
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Registration Subject to Cancellation

Registration No	2997646	Registration date	09/20/2005
Registrant	Ways, David E. 19706 77th Avenue East Bradenton, FL 342027198 UNITED STATES		

Goods/Services Subject to Cancellation

Class 022. First Use: 1993/12/05 First Use In Commerce: 1993/12/05 All goods and services in the class are cancelled, namely: TENTS
Class 025. First Use: 1993/12/05 First Use In Commerce: 1993/12/05 All goods and services in the class are cancelled, namely: Jackets, and Pants

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1457907	Application Date	08/22/1986
Registration Date	09/22/1987	Foreign Priority Date	NONE
Word Mark	SKEETER		
Design Mark			
Description of Mark	NONE		

Goods/Services	<p>Class 003. First use: First Use: 1984/11/23 First Use In Commerce: 1984/11/23 BOAT POLISH AND CLEANER</p> <p>Class 006. First use: First Use: 1985/01/17 First Use In Commerce: 1985/01/17 METAL KEY CHAINS</p> <p>Class 012. First use: First Use: 1961/01/05 First Use In Commerce: 1961/01/05 BASS BOATS</p> <p>Class 018. First use: First Use: 1985/05/23 First Use In Commerce: 1985/05/23 TOTE BAGS</p> <p>Class 021. First use: First Use: 1984/10/08 First Use In Commerce: 1984/10/08 [PORTABLE ICE CHESTS FOR FOOD AND BEVERAGES]</p> <p>Class 025. First use: First Use: 1977/02/01 First Use In Commerce: 1977/02/01 JACKETS, WINDBREAKERS, SWEATERS, CAPS [, SCARVES]</p>
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U.S. Registration No.	758037	Application Date	12/04/1962
Registration Date	10/08/1963	Foreign Priority Date	NONE
Word Mark	SKEETER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U019 (International Class 012). First use: First Use: 1960/12/30 First Use In Commerce: 1961/01/05 Boats		

Attachments	72158484#TMSN.gif (1 page)(bytes) SKEET 046CN.pdf (6 pages)(224874 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/gregory phillips/
Name	Gregory B. Phillips
Date	04/09/2008

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

SKEETER PRODUCTS, INC.,

Petitioner,

v.

DAVID E. WAYS,

Respondent.

) Cancellation No.: _____

) Registration No.: 2,997,646

) Mark: SKEETA

) I hereby certify that this correspondence and all
) marked attachments are being deposited with the
) United States Patent and Trademark Office,
) Trademark Trial and Appeal Board via electronic
) filing through their website located at
) <http://estta.uspto.gov/> on:

April 9, 2008

(Date)



Gregory B. Phillips

PETITION FOR CANCELLATION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir:

Skeeter Products, Inc., a Texas corporation (hereinafter referred to as "Petitioner"), believes that it has or will be damaged by Registration No. 2,997,646 for the mark SKEETA in International Classes 22 and 25 (the "SKEETA Registration"), registered by David E. Ways, an individual residing at 19706 77th Avenue East, Bradenton, Florida 34202 (hereinafter referred to as "Respondent") and therefore petitions to cancel.

As grounds for cancellation, it is alleged:

1. Respondent obtained the SKEETA Registration for the mark SKEETA in connection with "tents" in Class 22 and "jackets, and pants" in Class 25. The SKEETA Registration issued September 20, 2005, based on an application filed June 25, 2004. The

Respondent claims to have first used the mark shown in the SKEETA Registration at least as early as December 5, 1993 and to have first used the mark in interstate commerce at least as early as December 5, 1993.

2. Petitioner is engaged and, at all times relevant to the matters alleged in this Petition for Cancellation, was engaged in the business of manufacturing and distributing boats, bags, clothing and headwear under the SKEETER word mark and SKEETER and Design mark (the "SKEETER Marks").

3. Petitioner is the owner of and relies on U.S. Trademark Registration No. 1,457,907 for the word mark SKEETER for "bass boats" in Class 12, "tote bags" in Class 18, and "jackets, windbreakers, sweaters, caps" in Class 25, which registered on the Principal Register on September 22, 1987 (the "'907 Registration"). The '907 Registration is based on an application filed in the United States Patent and Trademark Office ("PTO") on August 22, 1986 and claims a date of first use in interstate commerce of January, 5 1961 for the goods in Class 12; a date of first use in interstate commerce of May 23, 1985 for goods in Class 18; and a date of first use in interstate commerce of February 1, 1977 for the goods in Class 25. A Section 8 & 9 Declaration for the renewal of this registration has been filed and accepted. In addition, a Section 15 Declaration for this registration for the mark has been filed and acknowledged. The '907 Registration is therefore incontestable. The '907 Registration issued prior to the actual filing date of the SKEETA Registration.

4. In addition, Petitioner is the owner of and relies on U.S. Trademark Registration No. 0,758,037 for the mark SKEETER and Design for "boats" in Class 12, which registered on the Principal Register on October 8, 1963 (the "'037 Registration"). The '037 Registration is based on an application filed in the United States Patent and Trademark Office ("PTO") on

December 4, 1962 and claims a date of first of December 30, 1960 and a date of first use in interstate commerce of January, 5 1961. A Section 8 & 9 Declaration for the renewal of this registration has been filed and accepted. In addition, a Section 15 Declaration for this registration for the mark has been filed and acknowledged. The '037 Registration is therefore incontestable. The '037 Registration issued prior to the actual filing date of the SKEETA Registration.

5. Petitioner's '907 Registration and '037 Registration are valid, subsisting, unrevoked and uncanceled. As such, the '907 Registration and '037 Registration constitute *prima facie* evidence of the validity of the registered SKEETER Marks and of the registrations thereof, and of Petitioner's ownership of the SKEETER Marks shown therein and of Petitioner's exclusive right to use the SKEETER Marks in commerce in connection with the goods named therein. They also constitute notice to Respondent of Petitioner's claim of ownership of the SKEETER Marks shown therein as provided in Sections 7(b), 22 and 33(a) of the Trademark Act of 1946 as amended.

6. Petitioner has used in interstate commerce the SKEETER word mark in connection with "bass boats" since at least as early as January, 5 1961, in connection with "tote bags" since at least as early as May 23, 1985, and in connection with "jackets, windbreakers, sweaters, caps" since at least as early as February 1, 1977. Petitioner's use of its SKEETER word mark covered by the '907 Registration has been valid and continuous since prior to the actual filing date of Respondent's Registration.

7. Petitioner has used in interstate commerce the SKEETER and Design mark in connection with "boats" since at least as early as January 5, 1961. Petitioner's use of its SKEETER

and Design mark covered by the '037 Registration has been valid and continuous since prior to the actual filing date of Respondent's Registration.

8. Petitioner, through advertising and promotion of its goods under the SKEETER Marks has built up, at great expense and effort, valuable goodwill symbolized by the SKEETER Marks and the relevant class of the public has come to associate Petitioner with the SKEETER Marks.

9. In addition to the protection afforded Petitioner by its '907 Registration and '037 Registration, Petitioner has extensive, non-registered, statutory and common-law rights in the SKEETER Marks for its boats, bags, clothing and headwear throughout the United States.

10. Petitioner's common law rights in the SKEETER Marks predate the filing date of, and the dates of first use listed in Respondent's Registration.

11. If Respondent's Registration is permitted to remain on the Principal Register, Respondent's corresponding *prima facie* exclusive right to use the SKEETA mark in nationwide commerce will conflict with Petitioner's lawful and exclusive right to use its SKEETER Marks nationwide.

12. Furthermore, on October 10, 2007, the PTO issued a final refusal to register Petitioner's U.S. Trademark Application Serial No. 78/972,275 for the mark SKEETER and Design, claiming that there is a likelihood of confusion with the SKEETA mark subject of the SKEETA Registration. Therefore, Petitioner is harmed by the SKEETA Registration.

13. Respondent's SKEETA mark is nearly identical to Petitioner's SKEETER Marks. In addition, the goods covered by the SKEETA Registration are identical and/or related to Petitioner's goods covered by the '907 Registration and '037 Registration and on which Petitioner uses its SKEETER Marks throughout the United States. As such, when Respondent uses the

SKEETA mark in connection with Respondent's goods, such use is likely to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

14. In view of Petitioner's prior rights in the SKEETER Marks, Respondent is not entitled to maintain its registration for the SKEETA mark pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

15. Respondent is not entitled to maintain its registration for the SKEETA mark pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

16. Respondent has no license, consent or permission from Petitioner to use or register the SKEETA mark.

WHEREFORE, Petitioner prays that U.S. Registration No. 2,997,646 be canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: April 9, 2008

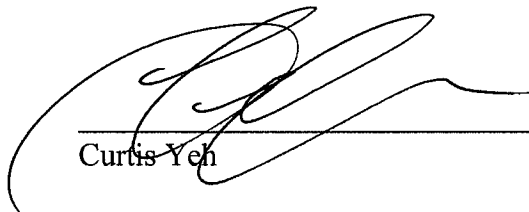
By: 

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Attorney for Petitioner,
Skeeter Products, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **PETITION FOR CANCELLATION** upon Respondent by depositing a copy thereof in the United States Mail, first-class postage prepaid, on April 9, 2008, addressed as follows:

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



Curtis Yeh

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