

ESTTA Tracking number: **ESTTA314986**

Filing date: **11/03/2009**

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 Street, 14th Floor Irvine, CA 92614 UNITED STATES efiling@kmob.com
Submission	Other Motions/Papers
Filer's Name	Gregory B. Phillips
Filer's e-mail	efiling@kmob.com
Signature	/gregory phillips/
Date	11/03/2009
Attachments	Dismiss.pdf ( 2 pages )(69118 bytes ) Order.pdf ( 4 pages )(102428 bytes )

**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 Nos. 92049168 and  
92049203

In the matter of U.S. Trademark  
Registration Nos. 2,997,646 and  
3,015,253

**COURT ORDER TO DISMISS CANCELLATION PROCEEDINGS**

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

Dear Sir or Madam:


On June 27, 2008, the Board suspended Cancellation Nos. 92049168 and 92049203 (consolidated on June 27, 2008) in light of Skeeta, Inc. v. Skeeter Products, Inc., Case No. 8:08-cv-1065-T-26TGW, United States District Court, Middle District of Florida, Tampa Division, which addressed the issue of likelihood of confusion between Petitioner's SKEETER marks and Respondent's SKEETA marks.

On September 25, 2009, U.S. District Judge Richard A. Lazzara, from the Middle District of Florida, Tampa Division, issued an Order granting Defendant's [Petitioner's] Motion for Summary Judgment ("Order"). In the Order, the court determined that there is no likelihood of confusion between Petitioner's SKEETER marks and Respondent's SKEETA marks. The Order also directs the Director of the USPTO to 1) allow Petitioner's U.S. Trademark Application Serial No. 78/972,275 and 2) dismiss Petitioner's cancellation actions submitted in the TTAB against Respondent's SKEETA marks. Attached as Exhibit A is a copy of the Order, to which no appeal has been filed.

Pursuant to the Order, it is hereby requested that the Board dismiss the above-referenced cancellation proceedings and direct the Examining Attorney to allow Petitioner's U.S. Trademark Application Serial No. 78/972,275 to pass to publication.

SKEETER PRODUCTS, INC.

Date: 11-3-09

By:   
Catherine J. Holland  
Gregory B. Phillips  
Knobbe, Martens, Olson & Bear, LLP  
2040 Main Street, 14th Floor  
Irvine, CA 92614  
Attorneys for Petitioner

8014751  
102609

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SKEETA, INC.,

Plaintiff,

v.  
SKEETER PRODUCTS, INC.,

CASE NO: 8:08-cv-1065-T-26TGW

Defendant,

v.  
SKEETA, INC. and DAVID WAYS,

Counter-Defendants.

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**ORDER**

Pending before the Court are the parties' cross motions for summary judgment and responses to those motions. After due consideration of the parties' submissions, the Court is at a loss to understand why they were unable to settle their differences at mediation or, for that matter, among themselves.

The parties have stipulated that they are not competitors, that there is no likelihood of confusion between their registered marks and designs, and that their products do not compete with one another.<sup>1</sup> Plaintiff does not agree, however, that there is no likelihood of confusion between its registered marks and designs and Defendant's amended mark and design. Notwithstanding Plaintiff's disagreement, the Court determines, as so cogently argued by Defendant, and consistent with Eleventh Circuit precedent,<sup>2</sup> that there is no dispute of material

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<sup>1</sup> See docket 24.

<sup>2</sup> See, e.g., Frehling Enter., Inc. v. International Select Group, Inc., 192 F.3d 1330, 1335 (11<sup>th</sup> Cir. 1999) (setting forth the seven factors the Eleventh Circuit considers in assessing whether or not a likelihood of consumer confusion exists) (citing Lone Star Steakhouse & Saloon, Inc. v. Longhorn Steaks, Inc., 122 F.3d 1379, 1382 (11<sup>th</sup> Cir.

fact with regard to the issue that Defendant's 1997 amended mark poses no threat of a potential for confusion with Plaintiff's mark in view of the parties' additional stipulation that there has never been a single instance of actual confusion since Defendant's amended mark began being used in 1997, a fact confirmed by the deposition testimony of Mr. David Ways.<sup>3</sup> In light of this determination, the Court agrees with Defendant's suggested disposition of this case.

Accordingly, it is ordered and adjudged as follows:

- 1) Plaintiff Skeeta's Motion for Summary Judgment (Dkt. 26) is denied.
- 2) Defendant Skeeter's Motion for Summary Judgment (Dkt. 23) is granted.
- 3) The Court determines as a matter of law that there is no likelihood of confusion between Defendant Skeeter's amended design mark and Plaintiff Skeeta's design mark.
- 4) The Court, pursuant to § 37 of the Lanham Act, 15 U.S.C. § 1119, directs the Director of the United States Trademark Office to allow Defendant Skeeter's '275 Application and to dismiss the Cancellation Petitions filed by Defendant Skeeter. As a consequence of this directive, Defendant Skeeter's counterclaim is rendered moot.
- 5) Each Party shall bear their own attorney fees and costs.
- 6) The Clerk is directed to enter judgment for Defendant and to close this case.

**DONE AND ORDERED** at Tampa, Florida, on September 25, 2009.

*s/Richard A. Lazzara*  
**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

**COPIES FURNISHED TO:**  
Counsel of Record

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1997)).

<sup>3</sup> See docket 25.

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**Skeeta, Inc.,**

**Plaintiff,**

**v.**

**Case No. 8:08-cv-1065-T-26TGW**

**Skeeter Products, Inc.,**

**Defendant,**

**v.**

**Skeeta, Inc and David Ways,**

**Counter-Defendants.**

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**JUDGMENT IN A CIVIL CASE**

**Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED** that judgment is entered for defendant.

Date: September 25, 2009

SHERYL L. LOESCH, CLERK

By: s/ R. Moglia, Deputy Clerk

Copies furnished to:

Counsel of Record  
Unrepresented Parties