

ESTTA Tracking number: **ESTTA210433**

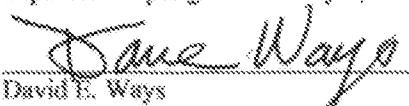
Filing date: **05/09/2008**

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

Proceeding	92049203
Party	Defendant Ways, David E.
Correspondence Address	Ways, David E. 19706 77th Avenue East Bradenton, FL 34202-7198 UNITED STATES dew@skeeta.com
Submission	Answer
Filer's Name	David E. Ways
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Signature	/David E. Ways/
Date	05/09/2008
Attachments	Design-Answer & Affirmative Defenses_signed.pdf ( 5 pages )(350277 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRIAL AND APPEAL BOARD

SKEETER PRODUCTS, INC.	)	Cancellation No.: 92049203
	)	
	)	Registration No.: 3015253
Petitioner,	)	
	)	Mark: SKEETA and Design
v.	)	
	)	I hereby certify that this correspondence and all
DAVID E. WAYS	)	marked attachments are being deposited with the
	)	United States Patent and Trademark Office,
Respondent,	)	Trademark Trial and Appeal Board via electronic
	)	filing through their website located at
	)	<a href="http://esta.uspto.gov">http://esta.uspto.gov</a> / on: May 9, 2008.
	)	
	)	
	)	David E. Ways

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW DAVID E. WAYS, who hereby files this Answer, and Affirmative

Defenses and states:

ANSWER

1. Admit.
2. Without knowledge.
3. Without knowledge.
4. Without knowledge.
5. Without knowledge.
6. Without knowledge.
7. Without knowledge.
8. Without knowledge.
9. Without knowledge.
10. Without knowledge.

11. Without knowledge.
12. Admit Petitioner has been issued final refusal to register a DIFFERENT mark for Skeeter and Design. Without knowledge to the remainder.
13. Deny SKEETA and Design mark is nearly identical to the REGISTERED Skeeter marks. Without knowledge to the remainder.
14. Without knowledge.
15. Without knowledge.
16. Without knowledge.

#### FIRST AFFIRMATIVE DEFENSE

There has never been confusion in commerce, nor is there a likelihood for confusion in commerce between the Respondent's SKEETA word mark (Reg. 2,997,646) and SKEETA and Design mark (Reg. No. 3,015,253), in regard to Petitioner's REGISTERED Skeeter marks (Reg. 1,457,907) and (Reg. 758,037). The Respondent's SKEETA Marks have coexisted with the Petitioner's Skeeter Marks on the Trademark Registry for over 11 years.

#### SECOND AFFIRMATIVE DEFENSE

Petitioner has made several admissions to the United States Patent and Trademark Office in their Responses to Office Actions, that there exists "No Likelihood of Confusion" between Petitioner's Skeeter Marks and the Respondent's SKEETA Marks.

#### THIRD AFFIRMATIVE DEFENSE

Petitioner is trying to register a DIFFERENT mark for Skeeter and Design (Serial No. 78/972,275), that the USPTO has determine could create a likelihood for confusion in commerce with Respondent's registered SKEETA and Design mark (Reg. 3,015,253).

#### **FOURTH AFFIRMATIVE DEFENSE**

The DIFFERENT mark that the Petitioner is trying to register for Skeeter and Design (Serial No. 78/972,275) looks nearly identical to Respondent's registered SKEETA and Design mark (Reg. 3,015,253), and has been determined by the USPTO to look materially and significantly unlike the Petitioner's REGISTERED Skeeter and Design mark (Reg. 758,037). Therefore, it must be determined that Respondent's SKEETA and Design mark (Reg. 3,015,253) also looks materially and significantly unlike the Petitioner's REGISTERED Skeeter and Design mark (Reg. 758,037).

#### **FIFTH AFFIRMATIVE DEFENSE**

Respondent 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 tents, jackets and pants under the SKEETA word mark and SKEETA and Design mark.

#### **SIXTH AFFIRMATIVE DEFENSE**

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

#### **SEVENTH AFFIRMATIVE DEFENSE**

Respondent is the owner of and relies on the U.S. Trademark Registration No. 2,997,646 for the SKEETA word mark for "tents" in Class 22 and "jackets and pants" in Class 25, which registered on the Principal Registration on September 20, 2005, based on an application filed on June 25, 2004, and claims a date of first use in commerce of December 5, 1993.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Respondent is the owner of and relies on the U.S. Trademark Registration No. 3,015,253 for the SKEETA and Design mark for "tents" in Class 22 and "jackets and pants" in Class 25, which registered on the Principal Registration on November 15, 2005, based on an application filed on June 25, 2004, and claims a date of first use in commerce of December 5, 1993.

#### **NINTH AFFIRMATIVE DEFENSE**

Respondent first registered No. 2,043,892 which is IDENTICAL to No. 2,997,646 for the SKEETA word mark for "tents" in Class 22 and "jackets and pants" in Class 25, on the Principal Registration on March 11, 1997, based on an application filed on June 26, 1996, and claims a date of first use in commerce of December 5, 1993. This SKEETA word mark was on the Principal Registration and in Continued Use for over seven years before being cancelled on December 13, 2003, for missing the date to file an affidavit of continued use. An application to re-register this mark was filed within one year.

#### **TENTH AFFIRMATIVE DEFENSE**

Respondent first registered No. 2,047,945 which is IDENTICAL to No. 3,015,253 for the SKEETA and Design mark for "tents" in Class 22 and "jackets and pants" in Class 25, on the Principal Registration on March 25, 1997, based on an application filed on June 3, 1996, and claims a date of first use in commerce of December 5, 1993. This SKEETA and Design mark was on the Principal Registration and in Continued Use for over seven years before being cancelled on December 27, 2003, for missing the date to file an affidavit of continued use. An application to re-register this mark was filed within one year.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing  
ANSWER AND AFFIRMATIVE DEFENSES has been furnished by U.S. Mail  
postage prepaid to: Gregory B. Phillips, KNOBBE, MARTENS, OLSON & BEAR, LLP,  
2040 Main Street, 14<sup>th</sup> Floor, Irvine, CA 92614 (Phone: 949-760-0404)  
this 9<sup>th</sup> day of May, 2008.

David E. Ways  
SKEETA, INC.  
19706 77<sup>th</sup> Avenue East  
Bradenton, Florida 34202  
Phone: (941) 322-9739  
Facsimile: (941) 322-9739

By: \_\_\_\_\_

David E. Ways