

UNITED STATES PATENT AND TRADEMARK OFFICE  
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McCarthy/Butler

April 21, 2020

Concurrent Use No. 94002836

*CareFreeEnzymes Inc.*  
(Application No. 76719861)

*v.*

*Michael Meyhoefer*  
(Registration No. 4811015)

*and*

*Naproco, LLC by change of name from  
Garden Girls Repellants<sup>1</sup>*

*and*

*Mosquito Free LLC*

**By the Trademark Trial and Appeal Board:**

CareFreeEnzymes Inc. (“Applicant”) filed an application for concurrent use registration for the mark **MOSQUITO FREE WATER** for, inter alia, water treatment products in International Class 1 and “insecticides and pesticides for home and garden use and professional use” in International Class 5.<sup>2</sup> In its application,

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<sup>1</sup> Evidence of the change of name is reflected in the printouts from The Office of Secretary of the State Denise W. Merrill, state of Connecticut. 13 TTABVUE 6-8. The caption of this proceeding is amended to reflect the change of name. TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 512.02 (2019).

<sup>2</sup> Application No. 76719861, filed on October 27, 2016, claiming a date of first use anywhere of February 1, 2001 and a date of first use in commerce of April 1, 2001.

Applicant recites its area of use as Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Virginia, and Wisconsin. Applicant also claimed the exclusive right to use the mark in the area of natural expansion comprising North Dakota, South Dakota, Nebraska, South Carolina, Montana, Idaho, New Mexico, Louisiana, and Washington.

Applicant named the following users as exceptions to its exclusive right to use its mark in commerce:

1. Michael Meyhoefer (“Meyhoefer”); using the term: MOSQUITO FREE, Registration No. 4811015 in the geographic area identified as the entire United States except the states of Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Virginia, and Wisconsin and the area of natural expansion comprising North Dakota, South Dakota, Nebraska, South Carolina, Montana, Idaho, New Mexico, Louisiana, and Washington.
2. Naproco, LLC by change of name from Garden Girls Repellants (“Naproco”); originally identified as using the term: MOSQUITO FREE in the state of Connecticut, but now, as explained below, using the term only as a licensee of Meyhoefer.

3. Mosquito Free LLC (“MFLLC”); originally identified as a common law user of an unidentified mark in the state of Georgia but, as explained below, not using the term MOSQUITO FREE as a mark.

Applicant submitted a Joint Motion to Suspend Proceeding and Remand Application to Examining Attorney seeking to amend its application to a geographically unrestricted application since the parties had determined that there is no likelihood of confusion between Applicant’s mark and that of Meyhoefer and Naproco.<sup>3</sup> 11 TTABVUE. Applicant also submitted a copy of an executed Consent Agreement between it and Meyhoefer which stipulates that they wish to enter a consent agreement.<sup>4</sup> *Id.* at 4-6. The Board found the Consent Agreement to be acceptable, but was unable to dissolve the concurrent use proceeding due to ambiguity regarding Naproco’s territorial rights in the state of Connecticut and the status of MFLLC. 12 TTABVUE. The Board suspended proceedings to allow the parties time to clarify these ambiguities. *Id.* at 6. On January 15, 2020, Meyhoefer and Naproco submitted a Response to Board Notice (“Defendants’ Response”) regarding Naproco’s territorial rights in the state of Connecticut. 13 TTABVUE. On January 17, 2020, Applicant submitted its Explanation of Territorial Rights of Garden Girls and Motion to Dismiss Mosquito LLC (“Applicant’s Explanation”). 14 TTABVUE.<sup>5</sup>

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<sup>3</sup> To be clear, the joint motion is signed by attorneys for Meyhoefer and Naproco, and Applicant.

<sup>4</sup> Meyhoefer identifies use of his mark “through one or more authorized licensees.” 11 TTABVUE 4.

<sup>5</sup> It appears that 15 and 16 TTABVUE are duplicates of 14 TTABVUE.

The Board finds Defendants' Response sufficient to address the issue regarding Naproco's territorial rights in the state of Connecticut. The response clarifies that Naproco is an authorized licensee of Meyhoefer's Registration No. 4811015 and whose use is authorized and controlled by Meyhoefer. Since Naproco, as a licensee, does not use the MOSQUITO FREE mark in its own right, territorial rights in the state of Connecticut are not recognized. This concurrent use proceeding is dissolved with respect to Naproco.

Turning to Applicant's Explanation, the Board considers whether MFLLC may be properly removed from this concurrent use proceeding. Applicant states it has been unable to identify actual use of MOSQUITO FREE by MFLLC. Applicant explains that MFLLC does not appear to be using the mark as applied to any product, and its continued use as a corporate name is not likely to cause consumer confusion. Applicant states it has been using its mark in Georgia since at least June 2014 but MFLLC did not come into existence until October 25, 2016. 14 TTABVUE 2-3. The Board finds this is sufficient explanation to dissolve this concurrent use proceeding with respect to MFLLC. Moreover, MFLLC has made no appearance in this proceeding despite Board correspondence having been mailed to its address of record, and Applicant and Meyhoefer having served MFLLC with all filings made in this proceeding. Accordingly, MFLLC has conceded to Applicant's proposed amendment to remove geographic restrictions.

In view thereof, Applicant's consented motion to amend its Application No. 76719861 to delete the geographic restrictions is **granted**. Trademark Rule 2.133(a), 37 C.F.R. § 2.133(a); *see also* Trademark Rule 2.127(a), 37 C.F.R. § 2.127(a).

Accordingly, this concurrent use proceeding is dissolved. However, inasmuch as Applicant's application published reciting geographic restrictions, Application No. 76719861 must be republished as a geographically unrestricted application. *See, e.g.*, TRADEMARK MANUAL OF EXAMINING PROCEDURE § 1505.03(a) (Oct. 2018). The application is hereby forwarded to the Publication Division of this Office for republication.