

ESTTA Tracking number: **ESTTA905310**

Filing date: **06/25/2018**

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

Proceeding	86363987
Applicant	Smooch Labs Inc.
Applied for Mark	JSWIPE
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Submission	Applicant's Motion to Suspend
Attachments	S1923.20000US00.MOTION TO SUSPEND APPEAL PROCEEDINGS.pdf(2469901 bytes)
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Date	06/25/2018

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

Applicant : Smooch Labs Inc.
Serial No. : 86/363987
Date Filed : August 12, 2014
Mark : JSWIPE
Class No. : 9

MOTION TO SUSPEND APPEAL PROCEEDINGS

Pursuant to 37 C.F.R. § 2.117(c) and TBMP §§ 510 and 1213, Applicant Smooch Labs Inc. (“Applicant” or “Smooch Labs”), through its undersigned counsel, hereby moves the Board for an order suspending the appeal of the refusal to register U.S. Application Serial No. 86/363987 for the mark JSWIPE (the “’987 Application”) pending the outcome of a related civil action. Said action (1) was filed in U.S. District Court for the Western District of Texas by Match Group, LLC (“Cited Registrant”), owner of U.S. Registration No. 4465926 for the mark SWIPE (the “Cited Mark”), which Registration was cited by the Examining Attorney in the likelihood of confusion refusal on which the instant appeal is based, (2) alleges infringement by a third party of the Cited Mark, and (3) will likely involve a challenge to the validity of the Cited Mark. Because the outcome of the civil action will likely directly affect the outcome of the instant appeal, Applicant submits that good cause exists for suspension of the same pending resolution of the civil action.

BACKGROUND AND GROUND FOR MOTION

On March 29, 2018, Applicant filed a Request for Reconsideration (“Request”) of the Examining Attorney’s refusal to register the ’987 Application under Trademark Act § 2(d) on the ground of likelihood of confusion in view of the Cited Mark. Applicant timely filed with its Request a Notice of Appeal. On April 22, 2018, the Examining Attorney denied Applicant’s

Request, and on April 24, 2018, the Board resumed the appeal proceedings and set the Appeal Brief deadline for June 25, 2018 (June 23 being a Saturday). Accordingly, Applicant's motion is timely filed.

On March 16, 2018, Cited Registrant filed an amended complaint against a third party, Bumble Trading Inc. ("Defendant"), in the U.S. District Court for the Western District of Texas, in which Cited Registrant alleged, *inter alia*, that Defendant had infringed the Cited Mark. [See Exhibit A, First Amended Complaint, at 39 ¶¶ 139–45.] Defendant's answer deadline is set for June 30, 2018. [See Exhibit B, Docket Report, May 29, 2018 Text Order.] Because the validity of the Cited Mark is likely to be challenged by Defendant in the district court proceeding, and thus directly bears on the outcome of the instant appeal, Applicant submits that good cause exists for granting the requested suspension.

In view of the above, Applicant respectfully requests that the Board grant its motion and suspend the instant appeal pending the outcome of Cited Registrant's district court infringement proceeding.

Respectfully submitted,



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EXHIBIT A

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