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

Proceeding	86363993
Applicant	Smooch Labs Inc.
Applied for Mark	JSWIPE
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Submission	Request for Reconsideration
Attachments	S1923.20000US01 - Motion.pdf(85424 bytes) S1923.20000US01 EXHIBIT A.PDF(2145816 bytes) S1923.20000US01.EXHIBITB.PDF(353039 bytes)
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Date	10/05/2018

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

Applicant : Smooch Labs Inc.
Serial No. : 86/363993
Date Filed : August 12, 2014
Mark : JSWIPE
Class No. : 45

**MOTION FOR RECONSIDERATION OF DECISION ON
APPLICANT'S MOTION TO SUSPEND APPEAL PROCEEDING**

Pursuant to 37 C.F.R. § 2.127(b) and TBMP § 518, Applicant Smooch Labs Inc. (“Applicant”), through its undersigned counsel, hereby requests reconsideration of the Board’s September 5, 2018 order denying Applicant’s Motion to Suspend Appeal Proceeding (“Motion to Suspend”) in Application Serial No. 86/363,993 for JSWIPE (the “’993 Application”). The granting of this request would serve judicial economy because it would be consistent with the Board’s August 8, 2018 Order granting Applicant’s virtually identical Motion to Suspend Appeal Proceeding in related U.S. Application No. 86/363,987 for JSWIPE (the “’987 Application”).

BACKGROUND AND GROUND FOR MOTION

The ’993 Application

On April 3, 2018, Applicant filed a Request for Reconsideration of the Examining Attorney’s refusal to register the ’993 Application under Trademark Act § 2(d) on the ground of likelihood of confusion in view of U.S. Registration No. 4465926 for the mark SWIPE (the “Cited Mark”), which registration is owned by Match Group, LLC (“Cited Registrant”). Applicant timely filed with its Request a Notice of Appeal. On May 3, 2018, the Examining Attorney denied Applicant’s Request, and on May 24, 2018, the Board resumed the appeal proceeding and set the Appeal Brief deadline for July 23, 2018. Applicant moved to suspend the proceeding on that deadline, pending the outcome of a related civil action, which (1) was filed in

U.S. District Court for the Western District of Texas by Cited Registrant, (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. Applicant explained in its Motion to Suspend that, because the outcome of the civil action will likely directly affect the outcome of the instant appeal, good cause exists for suspension of the same pending resolution of the civil action.

On September 5, 2018, the Board denied Applicant's Motion to Suspend. Thus, Applicant's Motion for Reconsideration is timely filed.

The Related '987 Application

On March 29, 2018, in the related '987 Application, Applicant filed a Request for Reconsideration 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—the same mark cited against Applicant's '993 Application. 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. Applicant then filed its Motion to Suspend [see Exhibit A, Ex Parte Appeal No. 86363987, TTAVBVUE 9] on that deadline—on the same grounds as Applicant's Motion to Suspend filed in the instant application. On August 8, 2018, the Board granted Applicant's Motion to Suspend the proceeding “pending a final determination of Civil Action No. 6:18-cv-00080-RP-JCM filed in the United States District Court for the Western District of Texas, Waco Division.” [See Exhibit B, August 8, 2018 Order in Ex Parte Appeal No. 86363987, TTAVBVUE 10.]

In view of the above, Applicant respectfully requests that the Board reverse its September 5, 2018 Order denying Applicant's Motion to Suspend Appeal Proceeding in the '993

Application. A suspension of this proceeding would serve to conserve the resources of the Board and of Applicant. Applicant will move to consolidate the appeals, should the Cited Mark survive the district court litigation.

Respectfully submitted,



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x10/05/18x

EXHIBIT A

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