

ESTTA Tracking number: **ESTTA911037**

Filing date: **07/23/2018**

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
Correspondence Address	JOHN STRAND WOLF GREENFIELD & SACKS PC 600 ATLANTIC AVENUE BOSTON, MA 02210 UNITED STATES Email: jlstrademarks@wolfgreenfield.com, sgstrademarks@wolfgreenfield.com, tm-uspto@pearlcohen.com, sstella@wolfgreenfield.com
Submission	Applicant's Motion to Suspend
Attachments	S1923.20000US01 Motion to Suspend Appeal Proceeding.pdf(81176 bytes) S1923.20000US01 EXHIBIT A.PDF(2145816 bytes) S1923.20000US01.EXHIBITB.PDF(353039 bytes)
Filer's Name	Stephanie G. Stella
Filer's email	sgstrademarks@wolfgreenfield.com, vbowden@wolfgreenfield.com
Signature	/sgs/
Date	07/23/2018

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 TO SUSPEND APPEAL PROCEEDING

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. 86/363993 for the mark JSWIPE (the “’993 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 April 3, 2018, Applicant filed a Request for Reconsideration (“Request”) 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 the Cited Mark. 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. 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, June 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,



Stephanie G. Stella
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
Telephone: (617) 646-8000

x07/23/18x

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MATCH GROUP, LLC

Plaintiff,

v.

BUMBLE TRADING, INC.

Defendant.

§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§

No. 6:18-cv-00080-RP-JCM

JURY TRIAL DEMANDED

PLAINTIFF MATCH GROUP, LLC’S FIRST AMENDED COMPLAINT

I. INTRODUCTION

Match Group, Inc. is the worldwide leader in online dating, with multiple popular brands of matchmaking services, including Match, Plenty of Fish, OkCupid, and more. Plaintiff Match Group, LLC, a wholly-owned subsidiary of Match Group, Inc., owns Tinder and its related intellectual property. Tinder is one of Match’s flagship brands. When released, it launched a cultural revolution in social networking and online dating. Tinder is famously characterized by a stack of swipeable cards containing photographs of potential matches nearby. If a user is interested in the person shown, the user swipes right. If not, the user swipes left. If two users swipe right on each other, a match has been made, and the users are permitted to communicate with one another through the app. The app has become so well-known that an entire generation is often described as the “Tinder generation.”

Match, through Tinder, spent significant time and effort developing and implementing the inventions embodied in versions of the Tinder app and claimed in a recently issued utility patent. Match, through its Tinder team, has spent significant time and money advertising the

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.