

ESTTA Tracking number: **ESTTA174943**

Filing date: **11/15/2007**

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

Proceeding	91173333
Party	Plaintiff TessBrainard
Correspondence Address	Ian K. Boyd, Esq. Harvey Siskind LLP 4 Embarcadero Center39th Floor San Francisco, CA 94111 UNITED STATES jschvimmer@harveysiskind.com, siskind@harveysiskind.com, clee@harveysiskind.com, lgabel@harveysiskind.com, iboyd@harveysiskind.com
Submission	Withdrawal of Opposition
Filer's Name	Seth I. Appel
Filer's e-mail	sappel@harveysiskind.com, iboyd@harveysiskind.com, clee@harveysiskind.com
Signature	/Seth I. Appel/
Date	11/15/2007
Attachments	Notice of Withdrawal.071115.pdf (4 pages)(124654 bytes)

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

In the Matter of Serial No.: 78/718,872
For the Mark: TESS
Filed: September 22, 2005
Published: June 13, 2006

In the Matter of Serial No.: 78/718,925
For the Mark: TESS TEEN EVERYDAY SKINCARE SYSTEM
Filed: September 22, 2005
Published: June 13, 2006

TESS BRAINARD)	Opposition No. 91173333
)	
Opposer,)	Opposition No. 91173335
)	
v.)	NOTICE OF WITHDRAWAL
)	
TESS, LLC)	
)	
Applicant.)	
)	

Opposer Tess Brainard hereby withdraws Opposition Nos. 91173333 and 91173335 with prejudice.

The parties have entered into a settlement agreement resolving these opposition proceedings, as well as a civil action involving the subject marks that had been pending in the Superior Court of California, County of Marin (Case No. CV 065053). The Court dismissed Case No. CV 065053 pursuant to the parties' agreement, and the dismissal is attached hereto.

Dated: November 15, 2007

HARVEY SISKIND LLP

By


Seth I. Appel

Harvey Siskind LLP
4 Embarcadero Center, 39th Floor
San Francisco, CA 94111
Telephone: (415) 354-0100

Attorneys for Opposer Tess Brainard

COPY

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Seth I. Appel (SBN 233421) Harvey Siskind LLP 4 Embarcadero Center, 39th Floor San Francisco, CA 94111		TELEPHONE NO.: (415) 354-0100	FOR COURT USE ONLY
ATTORNEY FOR (Name): Plaintiff Tess Brainard d/b/a Tess Skincare		<div style="text-align: center;"> <h1>FILED</h1> <p>OCT 23 2007</p> <p>KIM TURNER Court Executive Officer MARIN COUNTY SUPERIOR COURT By: S. Petersen, Deputy</p> </div>	
Insert name of court and name of judicial district and branch court, if any: Superior Court of California, County of Marin			
PLAINTIFF/PETITIONER: Tess Brainard d/b/a Tess Skincare			
DEFENDANT/RESPONDENT: Tess Skin Care, Inc. and Tess, LLC		CASE NUMBER: CV 06 5053	
<div style="display: flex; justify-content: space-between;"> <div> <p>REQUEST FOR DISMISSAL</p> <p><input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death</p> <p><input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other</p> <p><input type="checkbox"/> Family Law</p> <p><input type="checkbox"/> Eminent Domain</p> <p><input type="checkbox"/> Other (specify): Unfair Competition</p> </div> <div> <p>- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -</p> </div> </div>			

1. TO THE CLERK: Please dismiss this action as follows:

a. (1) ☒ With prejudice (2) ☐ Without prejudiceb. (1) ☐ Complaint (2) ☐ Petition(3) ☐ Cross-complaint filed by (name):

on (date):

(4) ☐ Cross-complaint filed by (name):

on (date):

(5) ☒ Entire action of all parties and all causes of action(6) ☐ Other (specify):*

Date: October 23, 2007

Seth I. Appel

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:

☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

** If a cross-complaint or Response (Family Law) seeking affirmative relief is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:

☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

(To be completed by clerk)

3. ☒ Dismissal entered as requested on (date): **OCT 23 2007**
4. ☐ Dismissal entered on (date): as to only (name):
5. ☐ Dismissal **not** entered as requested for the following reasons (specify):

6. ☐ a. Attorney or party without attorney notified on (date):
- b. Attorney or party without attorney not notified. Filing party failed to provide
☐ a copy to conformed ☐ means to return conformed copy

Date:

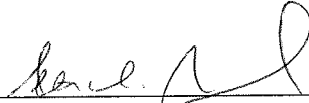
OCT 23 2007**KIM TURNER**

Clerk, by

S. PETERSEN, Deputy

CERTIFICATE OF TRANSMISSION

I hereby certify that a true and correct copy of the attached **NOTICE OF WITHDRAWAL**, dated November 15, 2007 (Opposition Nos. 91173333 and 91173335), is being electronically transmitted to the Trademark Trial and Appeal Board on November 15, 2007.

A handwritten signature in black ink, appearing to read "Seth I. Appel", is written over a horizontal line.

SETH I. APPEL

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached **NOTICE OF WITHDRAWAL**, dated November 15, 2007 (Opposition Nos. 91173333 and 91173335), was served on Applicant by mailing a copy thereof via first-class mail, postage prepaid, addressed to Monique Heyninck, Esq., Stradling Yocca Carlson & Rauth, 660 Newport Center Drive, Suite 1600, Newport Beach, CA 92660-6422, on November 15, 2007.


CYNTHIA LEE