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

Proceeding	91179716
Party	Plaintiff School Specialty, Inc.
Correspondence Address	Nicholas A. Kees Godfrey & Kahn, S.C. 780 N. Water Street Milwaukee, WI 53202 UNITED STATES docketing@gklaw.com, nkees@gklaw.com
Submission	Response to Board Order/Inquiry
Filer's Name	Jennifer L. Gregor
Filer's e-mail	docketing@gklaw.com, jgregor@gklaw.com, nakees@gklaw.com
Signature	/Jennifer L. Gregor/
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Direct: 414-287-9223
nakees@gklaw.com

February 17, 2010

FILED VIA ESTTA

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

RE: *School Specialty, Inc. v. Seat Sack, Inc.*
Opposition No. 91179716
Serial No. 78/955,618
Mark: SEAT SACK
Atty. File No. 009316-0627

Dear Ms. Faint:

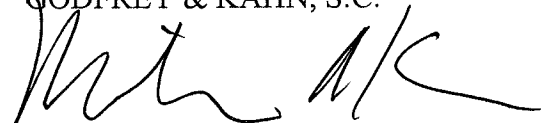
This letter is in response to the Board's January 29, 2010 Order requesting that the parties to the above referenced opposition proceeding inform the board of the status of the civil action which occasioned the suspension of this proceeding. The referenced civil action is *Seat Sack, Inc. v. Childcraft Education Corp.*, Civil Action No. 07-cv-3344-RJH-DFE, in the United States District Court for the Southern District of New York.

On January 22, 2010, the court in the aforementioned civil action issued a decision on the parties' cross-motions for summary judgment and entered judgment in favor of defendants, Childcraft Education Corp., and School Specialty, Inc. In the summary judgment opinion, a copy of which is enclosed, the Court held that the Applicant's mark SEAT SACK is merely descriptive and lacked secondary meaning. See Enclosed Opinion, Docket No. 75 at 24-26. On February 9, 2010, Seat Sack, Inc. filed a notice of appeal from the January 22, 2010 judgment and the underlying summary judgment opinion of the same date.

Should the Trademark Trial and Appeal Board have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

GODFREY & KAHN, S.C.



Nicholas A. Kees

United States Patent and Trademark Office
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Enclosure

cc: Edward M. Livingston (*via email to emlpa@comcast.net*)
Edward J. Carroll (*via email to eclaw@hvi.net*)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
SEAT SACK, INC.,

Plaintiff,

07 Civ. 3344 (DFE)

(This is an ECF case.)

- against -

OPINION AND ORDER

CHILDCRAFT EDUCATION CORP., and
SCHOOL SPECIALTY, INC.,

Defendants.

-----x

DOUGLAS F. EATON, United States Magistrate Judge.

Plaintiff Seat Sack, Inc. has alleged thirteen causes of action against the two defendants: Childcraft Education Corp. ("Childcraft") and School Specialty, Inc. ("School Specialty").

In February 2008, I denied Plaintiff's motion for a preliminary injunction. On January 27, 2009, the defendants filed a motion for summary judgment. (Docs. ##50-58.) On February 13, 2009, Plaintiff filed a cross-motion for summary judgment. (Docs. ##59-63.) On February 26, 2009, the defendants filed reply papers. (Docs. ##64-66.) On March 5, 2009, Plaintiff filed additional papers. (Docs. ##67-69.) On March 12, 2009, the defendants filed a motion to strike Doc. #67 and Doc. #69. (Docs. #70-71.) On March 13, 2009, Plaintiff filed papers opposing the motion to strike. (Docs. ##72-73.)

For the reasons set forth in today's Opinion and Order, I deny the defendants' motion to strike (Doc. #70), I grant the defendants' motion for summary judgment (Doc. #50), and I deny Plaintiff's cross-motion for summary judgment (Doc. #59). I am today entering a Judgment in favor of the defendants.

The Parties

Childcraft is a New York corporation headquartered in Pennsylvania. At all relevant times, it has been a wholly-owned subsidiary of School Specialty, a Wisconsin corporation. (SOF ¶1.)¹ School Specialty markets and sells educational products,

¹ "SOF" refers to Doc. #51, Defendants' Local Civil Rule 56.1 Statement of Material Facts.

programs and services to schools through various brands, including the "Childcraft" brand. (SOF ¶¶2-3.) Childcraft markets and sells thousands of various educational products through its catalog, website, and sales staff. (SOF ¶4.)

Plaintiff is Florida corporation wholly owned by Anne McAlear. In the early 1980's, she owned a company called The Nursery Collection, which manufactured infant bedding. Its number of employees grew from 3 to 38, and she sold the company around 1994. (4/4/08 McAlear Depo. Tr. 9-10.) In 1993, she designed the Seat Sack. In 1995, she retained a patent attorney and the U.S. Patent Office issued a design patent to her. The Seat Sack is a sack that drapes across the back of a student's chair and holds school supplies. She began manufacturing it and selling it in 1995. In 1998, she started selling it to schools in large cities, including New York City. In 1999, she incorporated the business and hired one employee. (McAlear Depo. Tr. 14-25.)

The Contractual Relationship
Between Plaintiff and Childcraft

At her deposition, Ms. McAlear vaguely recalled having conversations with Childcraft's Liz Plotkin prior to late January 2000: "I agreed to send samples and literature and pricing to her to see - - she was going to see about putting it [the Seat Sack] in the catalogue. That's pretty much all of our first conversation." (McAlear Depo. Tr. 23-24.)

Q: Do you recall the substance of any other conversations with her other than your initial conversation?

A: Not really.

Q: Did you ever make any notes of conversations with Ms. Plotkin?

A: No.

(McAlear Depo. Tr. 41-42.)

In late January 2000, Childcraft's Liz Scott sent Ms. McAlear a one-page form entitled "Childcraft Education Corp. Exclusives - - Growing Years Catalog" (the "Agreement"). On January 28, 2000, after the word "Vendor," Ms. McAlear wrote "Seat Sack Inc." (the name of her corporation), and she signed the form as President. (SOF ¶6.) Childcraft has entered into this type of agreement with hundreds of vendors for the sale of

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