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Proceeding No.	92061574

Filing Date	11/27/2015

Part	1of	1

92061574

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

SKIPPY, INC.,	)	
	)	
Petitioner,	)	#71529307
	)	
	)	Cancellation No. 92061574
v.	)	
	)	
HORMEL FOODS, LLC,	)	
	)	
Respondent.	)	

PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Petitioner, Joan Crosby Tibbetts ("Tibbetts"), serves in her *dual role* as Administratrix of the Percy Crosby Estate and as President of Skippy, Inc. As such, she seeks redress for the unlawful taking of property from the Percy Crosby estate under New York law, by Respondent's predecessor, Rosefield et al. That key issue was not addressed in the *Skippy* decisions Respondent claims are res judicata and supposedly bar Petitioner from seeking cancellation of Rosefield SKIPPY registration, No. 0504,940. In view of the extraordinary circumstances underlying the history of fraud, it is unconscionable for Respondent to ask this Honorable Board to dismiss this Petition with prejudice. The PTO is under a congressional mandate to protect the public interest, and not to give protection to registrants who steal another's trade name and good will, thereby becoming unjustly enriched, using vexatious litigation to silence dissent.

I. STATEMENT OF GENUINE ISSUES OF FACT

1. Respondent's references to the decisions in 1980 and thereafter as "Skippy I, II, III and IV" are misleading. The actual *Skippy I* is the 1934 decision of the Examiner of Interferences, *Skippy, Inc. v. Rosefield Packing Co., Ltd.*, Opposition 13,134, which became final when not appealed, and is res judicata. (Petition **Exhibits 1-4, 7**). This case should have terminated in 1934, 37 CFR 2.136.

2. *Skippy II*: *P.L. Crosby pro se v. Rosefield*, filed in New York, Petition, 13, 31(b) Respondent's predecessor refused to allow discovery, 1980 set seq..

3. *Skippy III*: New York County Surrogate Court 1967 decision for Administratrix (published NY Law Journal, 1/24/67). Petition at 15.

4. *Skippy IV*: *Joan Tibbetts v. Rose Stein, Esq.*, New York County Supreme Court, a stockholder derivative suit; decision Feb. 8, 1968, Skippy ownership awarded to Crosby heirs. Petition at 14-15. **Exhibits A1, A2.**

5. *Skippy V*: *Skippy, Inc. v. CPC Int'l Inc.*, 210 USPQ 589 (E.D. Va. 1980); 674 F.2d 209 (4th Cir. 1982; cert. denied, ___U.S.___(1982). Rosefield §15 affidavit held false as a matter of law, and vacated, *Id.* at 216. Petition at 2.

6. *Skippy VI*: *Skippy, Inc. v. Lord, Day & Lord*, 1981-85 (S.D.N.Y.) dismissed, collateral estoppel. LDL should have been named joint tortfeasor in *Skippy V.* See WSJ, **Exhibit A3.**

7. *Skippy VII*: *CPC v. Skippy, Inc., Joan Tibbetts*, 651 F. Supp. 62 (E.D. Va. 1986), reversed in part, 214 F.3d 456 (4th Cir. 2000).

8. *Skippy VIII*: *CPC v. Skippy, Inc.*, (1982-87), 3 USPQ2d 1456 TTAB (1987).

9. *Skippy IX*: *CPC/Bestfoods v. Skippy, Inc. and Joan Tibbetts*, 214 F.3d 456 (4th Cir. 2000) (contempt order rev'd, remand on Rule 65(d). Bestfoods then merged with Unilever (aka Lipton).

10. *Skippy X*: *Skippy, Inc. v. Lipton Inv. Inc.*, Cancellation 32,070 dismissed with prejudice, TTAB 2002 (Respondent's EXHIBIT A).

11. *Skippy XI*: *Skippy, Inc. v. Lipton*, (§1071(b)), 345 F. Supp. 2d. 582 (E.D. Va. 2002).

12. *Skippy XII*: *Skippy, Inc. v. Lipton and attorneys Webner and Trattner*, 02-1571, (E. D. Va. 2002), unpublished. Independent action in equity re defendant attorneys' complicity in fraud on the 1980 *Skippy* court (new evidence, a 112-page complaint). Motion to dismiss granted. When cert. was denied, defendants sought Rule 11 sanctions ($42,000 award waived for Petitioner and counsel to

dismiss sanctions appeal). Case ended, Aug. 2005. Respondent omits this decision, a companion case to *Skippy X* and *XI*.

13. Respondent omits *Skippy XII* but cites over 15 times the district court's 2002 decision, 345 F. Supp. 2d 582 (*Skippy XI*) that the appeals court held was erroneous, *Swatch AG v. Beehive Wholesale, LLC*, 739 F.3d 150 (4th Cir. 2014). In *Swatch*, the Fourth Circuit clarified the standard of review that district courts must apply to decisions by the TTAB in actions brought under 15 U.S.C. § 1071(b). *Swatch* held that "where new evidence is submitted, *de novo* review of the entire record is required because the district court 'cannot meaningfully defer to the PTO's factual findings if the PTO considered a different set of facts.'" 739 F.3d at 156 (quoting *Kappos v. Hyatt,* 132 S. Ct. 1690, 1697 (2012)). In so holding, the Fourth Circuit implicitly overruled its *per curiam* affirmance of the district court's decision in *Skippy XI*, on which Respondent relies. At page 6 of Respondent's Reply in Support of the Motion to Dismiss (now Motion for Summary Judgment), Respondent states that "Petitioner misreads" the *Swatch* and *Timex* decisions. (Reply at 6)

14. The new standard in *Swatch* is favorable to Petitioner; the new evidence in *Skippy XI* and *XII* was ignored by Judge Cacheris during the half-hour hearing in December of 2002. It was in that hearing that Respondent's former counsel (Webner) told the district court that client was "not prepared to discuss" the 1905 Act statute or the 1934 *Skippy* decision, alleging that it was one of Tibbetts' "quaint legal theories."

15. In addition to the above-numbered 12 *Skippy* cases, there were six cases from 1981 to 1997 in which Tibbetts and Skippy, Inc. were either plaintiffs or defendants in state and federal courts (D. Ct. Md.; Fairfax County, VA, (crim. and civil); Colorado state and federal courts; and Maine state and federal courts). Respondent's predecessor orchestrated these actions with the stated intent to "destroy" Petitioner's licensing business and to "wipe out" Tibbetts' finances. As Administratrix,

Tibbetts became the target of extortion schemes after Crosby's death, which conspiracy began in 1934, immediately following the final decision of the Examiner of Interferences (Petition at 8-9, **Exhibits 2, 3**).

16. The stated threat in Exhibits 2 and 3 to complain to the criminal division of the Justice Department about the then-Skippy Opposer in 1933-34 "*should Skippy, Inc. ever attempt to exercise any legal action against our client*" [Rosefield] (italics supplied) was carried out over years of reprisal, vexatious litigation, and disparagement of Percy Crosby's reputation as famed Skippy creator. Rosefield was thus enabled to build its SKIPPY empire by a hostile takeover of Skippy, Inc. that was concealed from the PTO, government agencies, and the Crosby heirs for years. Now, Respondent as 2013 SKIPPY buyer-assignee avoids this dark history to procure summary judgment, alleging that Petitioner is barred by res judicata and failure to file a compulsory counterclaim. Respondent's motion to dismiss is the fifth motion since 1933, when applicant Rosefield's motion to dismiss was overruled in 1934 by the Examiner of Interference (Petition **Exhibit 7**, the 1954 Wenderoth summary before the PTO file was destroyed in 1965-66 is quoted at p. 10 of Respondent's EXHIBIT C)..

17. In *Skippy V,* Respondent's assignor (CPC) was granted summary judgment in 1980 on laches/estoppel, falsely telling the court that "Percy Crosby and Skippy, Inc. slept on their rights for 47 years [1933-1980]." What was not disclosed was Percy Crosby's false imprisonment as a ward of New York State, his pleas for release ignored, **Exhibit A4**, and that CPC (through its Chicago agent) was trying to buy all Skippy assets from disloyal Crosby fiduciaries without the custodial court's approval, for a mere $4,000. **Exhibit A5**. That hasty scheme to prevent the valuable Skippy assets from becoming part of the estate was aborted because Percy Crosby (then comatose) died the day of that closing, and his daughter was appointed to administer the estate and marshal assets owed to the estate, known or unknown.

18. In CPC's deposition of Tibbetts, and as trial witness, she was told by counsel (Trattner) not to mention anything about the New York actions or years of high-pressure negotiations with CPC's

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