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Filing date: **03/20/2023**

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

Proceeding no.	92081574
Party	Defendant Crunchy Tobacco Inc
Correspondence address	CRUNCHY TOBACCO INC P. O. BOX 6028 ARLINGTON, VA 22206 UNITED STATES Primary email: crunchytobacco@gmail.com 7035933511
Submission	Motion to Dismiss - Rule 12(b)
Filer's name	Michael C. Whitticar
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Signature	/Michael C. Whitticar/
Date	03/20/2023
Attachments	Motion to Dismiss or stay TTAB petition with Exhibit A.pdf(1334314 bytes )



and “its,” failing to distinguish between use or other conduct by Mr. Kight, or use or other conduct by the LLC, Funnels, LLC. *See* Petition §§ 3-5, 13-14, 16, 24-25 and 30.

Petitioner’s petition and registration improperly lists the petitioner as Nathan M. Kight, d/b/a Funnels, LLC. This is improper because an LLC is a different and separate legal and commercial entity from its owner. An individual person can “do business as” or “d/b/a” a brand name or trade name, but he cannot “do business as” or “d/b/a” a separate legal and commercial entity such as a corporation or an LLC. Thus, both the petition and registration are improper, and Mr. Kight’s Petition fails to state a claim on which relief may be granted.

For the foregoing reasons, Mr. Kight’s petition is due to be dismissed for failing to state a claim on which relief may be granted.

In addition, a related case is now pending in the United States District Court for the District of Columbia (Case No. 1:21-cv-03189-CKK: *Kight v. Crunchy Tobacco*). Infringement and validity of the parties’ marks is currently at issue and being litigated in that case. *See* Ex. A: Answer to Counterclaim (Defense No. 1). Therefore, in the interests of justice and judicial economy, this case and proceedings on Plaintiff’s petition should be stayed pending litigation and completion of the D.C. District Court civil action.

Respectfully Submitted This 20<sup>th</sup> Day of March, 2023:

By: /s/ Michael C. Whitticar  
Counsel

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**ESTTA/ECF FILING CERTIFICATE**

I hereby certify that on this 20<sup>th</sup> Day of March, 2023, I caused the foregoing motion to dismiss or stay to be served by email and transmitted through the TTAB's ESTTA case filing system to the following counsel of record:

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