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

Proceeding no.	92084149
Party	Plaintiff Get Spiffy, Inc.
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Submission	Motion for Summary Judgment Yes , the Filer previously made its initial disclosures pursuant to Trademark Rule 2.120(a); OR the motion for summary judgment is based on claim or issue preclusion, or lack of jurisdiction. The deadline for pretrial disclosures for the first testimony period as originally set or reset: 04/11/2025
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Date	10/20/2024
Attachments	SJ Motion 10-20-24 - final.pdf(258295 bytes) exhibits.pdf(4655210 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Get Spiffy, Inc.)	
)	
Petitioner;)	
)	
v.)	Cancellation No. 92084149
)	Reg. No.: 6666573
Bubble Down, LLC,)	Mark: SPIFFY SHIELD & Design
)	
Respondent.)	

PETITIONER’S MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure Rule 56(c), Trademark Rule 2.127(e), 37 C.F.R. § 2.127(e), and Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 528, Get Spiffy, Inc. (“Petitioner”) hereby moves for summary judgment on its claim for cancellation of Registration No. 6666573 (“Respondent’s Registration”) on the ground of likelihood of confusion under Section 2(d) of the Trademark Act. Petitioner had previously filed on March 20, 2024 a motion styled as one for summary judgment (“the Prior Motion”). Due to its timing, the Board treated the Prior Motion as for judgment on the pleadings, and issued an order on August 15, 2024 denying the motion and resetting the case schedule.

This motion is based upon the pleadings on file in this proceeding (including Petitioner’s Registration No. 5114933 (“Petitioner’s Registration”)), a declaration of Petitioner’s Chief Executive Officer and attachments thereto, a declaration of the undersigned counsel for Petitioner and attachments thereto, and upon this brief. As shown below, summary judgment in favor of Petitioner on its claim of likelihood of

confusion is required. Indeed, the logo that is the subject of Respondent's Registration should not have been allowed to register over, and coexist on the registry with, Petitioner's SPIFFY mark.

I. FACTUAL BACKGROUND

A. Petitioner's Mark and Registration

The details of Petitioner's Registration, which is of record in this proceeding, are as follows:

Mark: SPIFFY
Reg. No.: 5114933
Reg. Date: January 3, 2017
Application Date: June 17, 2014
Goods and Services:

International Class ("IC") 9: Computer software and downloadable mobile applications for use in automated scheduling of washing, cleaning and detailing services and for dispatching of mobile washing, cleaning and detailing units to the scheduled appointments

IC 37: Providing washing, cleaning and detailing services for vehicles; providing a website featuring information regarding washing, cleaning and detailing services

IC 38: Providing an online forum for transmission of messages among computer users concerning vehicle washing, cleaning and detailing and the industries of vehicle washing, cleaning and detailing; telecommunication services, namely, routing calls, emails, SMS messages, push-notifications and electronic messages to local third-party providers of car washing services in the vicinity of the caller or messenger

IC 42: Providing temporary use of online, non-downloadable software for automated scheduling of vehicle washing, cleaning and detailing service appointments and dispatching mobile washing, cleaning and detailing units to the appointments; providing a website featuring technology that allows users to schedule appointments to have their vehicles washed, cleaned and detailed; computer services, namely, creating an on-line community for registered users to participate in discussions relating to vehicle washing,

cleaning and detailing and the industries of vehicle washing, cleaning and detailing

Petitioner's constructive use date arising from Petitioner's Registration, which enjoys incontestable status, is June 17, 2014 ("the Constructive Use Date"). Petitioner has been using its SPIFFY mark in commerce since February 5, 2014 ("the Launch Date") for providing washing, cleaning and detailing services for vehicles and related goods and services. Declaration of Karl S. Murphy, Chief Executive Officer and Co-Founder of Petitioner ("Murphy Decl."; attached as Exhibit 1) at ¶ 2.

Petitioner's Registration was attached to the Petition for Cancellation that initiated this proceeding. Thus, it is of record for this proceeding pursuant to 37 C.F.R. § 2.122(c) and (d)(1). Petitioner also owns pending Application No. 97274782, filed on February 18, 2022, to register the SPIFFY mark for various goods and services ("Petitioner's Application"). Petitioner's Application has been refused registration on the ground of likelihood of confusion with Respondent's Registration, and is suspended pending disposition of this proceeding. Declaration of Scott J. Major ("Major Decl."; attached as Exhibit 2) at ¶ 2. A true and correct copy of the Final Office action refusing registration of Petitioner's Application is attached. *Id.* at ¶ 2 (Attachment 1 to Major Decl.).

Petitioner has used the SPIFFY mark in commerce continuously since the Launch Date for washing, cleaning and detailing services for vehicles, related vehicle care services and a mobile application. Murphy Decl. at ¶ 3. Since the Launch Date, Petitioner has expanded the geographic territory in which it renders services and

provides goods under the SPIFFY mark. It currently provides goods and services, including washing, cleaning and detailing services for vehicles, under the SPIFFY mark, either directly or through franchisees, in over 30 metropolitan areas located in 12 States within the United States. *Id.* at ¶ 4. By April 8, 2018, Petitioner was providing its mobile application and services, including washing, cleaning and detailing services for vehicles, under the SPIFFY mark in the following metropolitan markets in the United States: Atlanta, Charlotte, Dallas, Los Angeles, and Raleigh. *Id.* at ¶ 5.

Since at least as early as August 1, 2015, Petitioner has promoted its mobile application and services, including washing, cleaning and detailing services for vehicles, under the SPIFFY mark via its website at getspiffy.com. *Id.* at ¶ 6. A true and accurate representation of a page from the website at getspiffy.com from August 1, 2015, as retrieved from the Internet Archives, is attached. *Id.* at ¶ 7 (Attachment 1 to Murphy Decl.). Also attached is a true and accurate representation of a page from the website at getspiffy.com from June 29, 2016 that was submitted to the Patent and Trademark Office (“PTO”) as a specimen of use in support of the Statement of Use filed for the application underlying Petitioner’s Registration No. 5114933 for the SPIFFY mark. *Id.* at ¶ 8 (Attachment 2 to Murphy Decl.).

Since November 11, 2014, Petitioner has offered under its SPIFFY mark at blog.getspiffy.com a blog featuring information on, among other things, vehicle washing, cleaning and detailing. The blog now features over 360 postings, including more than 60 that were posted before April 9, 2018. *Id.* at ¶ 9. Petitioner also

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