

EXHIBIT 39



Not Reported in F.Supp.2d, 2008 WL 144693 (N.D.Cal.)
(Cite as: 2008 WL 144693 (N.D.Cal.))

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Only the Westlaw citation is currently available.

United States District Court,
N.D. California.
FLOTSAM OF CALIFORNIA, INC., dba Noland's
on the Wharf and Shoreline Surf Shop, Plaintiff,
v.
HUNTINGTON BEACH CONFERENCE AND
VISITORS BUREAU, Defendant.
No. C 06-7028 MMC.

Jan. 10, 2008.

Theodore T. Herhold, Steven William Flanders,
Townsend and Townsend and Crew LLP, Palo
Alto, CA, Anthony John Malutta, Marie C. Seibel,
Townsend and Townsend and Crew LLP, San Fran-
cisco, CA, for Plaintiff.

Richard Paul Sybert, Ana Claudia Casanov Guedes,
Gordon & Rees LLP, Maha Sarah, San Diego, CA,
Dion N. Cominos, Gordon & Rees LLP, San Fran-
cisco, CA, Douglas Patrick Smith, Gordon & Rees
LLP, Newport Beach, CA, for Defendant.

ORDER DENYING PLAINTIFF/ COUNTERDEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT; VACAT- ING HEARING

MAXINE M. CHESNEY, District Judge.

*1 Before the Court is plaintiff/counterdefendant Flotsam of California, Inc.'s ("Flotsam") Motion for Partial Summary Judgment, filed November 21, 2007. Defendant/counterclaimant Huntington Beach Conference and Visitors Bureau ("the Bureau") has filed opposition, to which Flotsam has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter suitable for decision on the papers, VACATES the hearing scheduled for

January 11, 2008, and rules as follows.

Flotsam seeks summary judgment on any claim the Bureau has made herein in which the Bureau asserts ownership of a "Surf City" mark, as opposed to the Bureau's claims based on the Bureau's asserted ownership of a "Surf City USA" mark. In response, the Bureau argues that it is not claiming herein ownership of a "Surf City" mark.

Flotsam's counterclaims do not allege ownership of a "Surf City" mark. ^{FN1} Further, there is no showing any discovery has occurred on any claim pertaining to a "Surf City" mark. Finally, although Flotsam argues that, in the absence of a grant of summary judgment on any claim based on the Bureau's ownership of a "Surf City" mark, Flotsam could be subject in the future to a suit in which the Bureau claims ownership of a "Surf City" mark, the Court lacks jurisdiction to resolve a matter not raised by the instant pleadings. See *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir.2000) (en banc) (holding federal courts may not "issue advisory opinions" or "declare rights in hypothetical cases").

FN1. In Defendants Answer to First Amended Complaint [and] Counterclaims, filed February 12, 2007, the Bureau alleges in ¶ 48 that "Flotsam's actions in designing, manufacturing, packaging, selling, or distributing goods under the 'Surf City' mark, without consent of the Bureau, constitutes false designation of origin and trademark infringement" Although such paragraph could be interpreted as alleging the Bureau owns the mark "Surf City," the Bureau, on November 13, 2007, and in response to Flotsam's stated concern as whether such a claim was being alleged, filed a "Notice of Errata" on November 13, 2007, stating that the phrase " 'Surf City' mark" in ¶ 48 was a typographical error, and that the intended phrase was " 'Surf

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City USA' mark.”

Accordingly, the motion is hereby DENIED.

IT IS SO ORDERED.

N.D.Cal.,2008.
Flotsam of California, Inc. v. Huntington Beach
Conference and Vistors Bureau
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