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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

Streak Products, Inc.,

Plaintiff,

vs.

Antec, Inc., E-Power Technology/PCMCIS,  
Enermax Technology Corp., Enermax USA  
Corp., Mushkin Inc., Sea Sonic Electronics Co.  
Ltd., Sea Sonic Electronics Inc., Tagan  
Technology Co., Topower Computer Industrial  
Co. Ltd., and Topower Computer (USA) Inc.,

Defendants, Counter-Claimants

CASE NO. CV09-04255 RS

**JUDGE: HONORABLE RICHARD  
SEEBORG**

**AS MODIFIED BY THE COURT  
JOINT STIPULATION and PROPOSED  
ORDER REGARDING**

**(1) DISMISSAL OF DEFENDANTS' FALSE  
MARKING AND UNFAIR COMPETITION  
COUNTERCLAIMS; AND**

**(2) STAY OF PROCEEDINGS PENDING  
FINAL OUTCOME OF INTER PARTES  
REEXAMINATION SERIAL NO. 95/001,319**

Courtroom: 3  
Case Filed: April 4, 2008  
Trial Date: December 2012

## RECITALS

1  
2 WHEREAS, Plaintiff Streak Products, Inc. ("Plaintiff") and Defendants Antec, Inc. ("Antec");  
3 Mushkin, Inc. ("Mushkin"); Tagan Technology Co. ("Tagan"); Topower Computer (USA), Inc.  
4 ("Topower USA"); Enermax USA Corp. ("Enermax USA"); Sea Sonic Electronics, Inc. ("Sea Sonic  
5 USA"); Sea Sonic Electronics Co., Ltd. ("Sea Sonic TW"); Topower Computer Industrial Co., Ltd.  
6 ("Topower TW"); and Enermax Technology Corp. ("Enermax TW") (collectively, "the Defendants")  
7 (Plaintiff and Defendants collectively, "the Parties") recognize the uncertainty of the outcome of  
8 complex litigation and commercial disputes, as well as the extended period of time that it could take,  
9 and the substantial cost that would be incurred, for the parties to resolve their respective claims in this  
10 case through litigation; and have independently concluded that their respective interests would best be  
11 served by limiting the scope of the disputes between them where possible so as to efficiently resolve any  
12 remaining disputes between them as to U.S. Patent No. 7,133,293 ("the '293 Patent") on a going-  
13 forward basis;

14 WHEREAS, in response to Plaintiff's Complaint for patent infringement, each of the Defendants  
15 served an answer including a counterclaim for false patent marking under 35 U.S.C. § 292, based on  
16 Plaintiff's sale of its Power Bar product marked with the '293 Patent number;

17 WHEREAS, in response to Plaintiff's Complaint for patent infringement, each of the Defendants  
18 served an answer including a counterclaim for unfair competition under the California Business &  
19 Professions Code § 17200 based on their allegations of false patent marking;

20 WHEREAS, on September 16, 2011, President Obama signed into law the Leahy-Smith  
21 America Invents Act ("the America Invents Act"), which *inter alia* amended 35 U.S.C. § 292(b) to (1)  
22 state that "[o]nly the United States may sue for penalty"; and (2) state that only those parties who can  
23 assert a "competitive injury" may file a civil action for recovery of damages "adequate to compensate  
24 for the injury";

25 WHEREAS, the America Invents Act states that the amendments to §292 shall apply to all cases  
26 that are pending on or commenced on or after September 16, 2011;

27 WHEREAS, the Defendants have agreed to dismiss, with prejudice, their counterclaims for false  
28 patent marking and unfair competition under the California Business & Professions Code § 17200;

1 WHEREAS, Plaintiff and the Defendants have jointly agreed to stay this litigation pending final  
2 resolution of U.S. Patent and Trademark Office *Inter Partes* Reexamination Serial No. 95/001,319 (“the  
3 Reexamination Proceeding”), including final resolution of any appeals to the Board of Patent Appeals  
4 and Interferences and the United States Court of Appeals for the Federal Circuit;

5 WHEREAS, Defendants have discussed dismissal of the counterclaim for false patent marking  
6 under 35 U.S.C. § 292 with the Director of Intellectual Property Staff of the U.S. Department of Justice,  
7 Civil Division, and he has indicated that the Department of Justice will not object to the dismissal of this  
8 counterclaim;

9 WHEREAS, the Parties agree that this stipulation agreeing to a stay of the proceedings does not  
10 affect the stay previously granted to defendants Magnell and NewEgg (Dkt. #261) which remains in  
11 effect as granted; and

12  
13 **STIPULATION**

14 IT IS HEREBY STIPULATED, by and between the Plaintiff and the Defendants, through their  
15 undersigned attorneys of record, and in accordance with the recitals contained herein, that:

16 1. The Defendants agree to dismiss their counterclaims for false patent marking and for unfair  
17 competition under the California Business & Professions Code § 17200 with prejudice, and

18 2. The Parties agree that this litigation be stayed pending final resolution of the Reexamination  
19 Proceeding, including final resolution of any appeals to the Board of Patent Appeals and Interferences  
20 and the United States Court of Appeals for the Federal Circuit.

21 3. The Parties agree that in the event this litigation proceeds to a jury trial, the fact that this  
22 litigation was stayed pending final resolution of the Reexamination Proceeding shall not be disclosed to  
23 the jury. Such agreement does not preclude the admission of the Reexamination Proceeding, its filings,  
24 USPTO decisions or any other thing associated with the Reexamination Proceeding from being  
25 introduced into evidence in the litigation as permitted by the Federal Rules of Evidence or any other  
26 appropriate rule or law.

The stay discussed in paragraph 2, will run for six months from the date of  
this order. The parties will schedule a Case Management Conference a  
month before the conclusion of this six month period.

1 Dated: November 30, 2011

2 Respectfully submitted,

3 **GREENBERG TRAUIG, LLP**

4 Michael A. Nicodema (*pro hac vice*)  
5 David M. Joyal (*pro hac vice*)  
6 Jeffrey K. Joyner (SBN 180485)  
7 Jeffrey F. Yee (SBN 193123)

8 By: /s/ Jeffrey F. Yee  
9 Attorneys for Plaintiff Streak Products, Inc.

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16 By: /s/ Kevin M. Pasquinelli (with permission)  
17 Attorneys for Defendants-Counterclaimants

18 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

19 Dated: 11/30/11

20   
21 Hon. Richard Seeborg  
22 United States District Judge  
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