

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

SKEETA, INC.,

Plaintiff,

v.  
SKEETER PRODUCTS, INC.,

CASE NO: 8:08-cv-1065-T-26TGW

Defendant,

v.  
SKEETA, INC. and DAVID WAYS,

Counter-Defendants.

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**ORDER**

Pending before the Court are the parties' cross motions for summary judgment and responses to those motions. After due consideration of the parties' submissions, the Court is at a loss to understand why they were unable to settle their differences at mediation or, for that matter, among themselves.

The parties have stipulated that they are not competitors, that there is no likelihood of confusion between their registered marks and designs, and that their products do not compete with one another.<sup>1</sup> Plaintiff does not agree, however, that there is no likelihood of confusion between its registered marks and designs and Defendant's amended mark and design. Notwithstanding Plaintiff's disagreement, the Court determines, as so cogently argued by Defendant, and consistent with Eleventh Circuit precedent,<sup>2</sup> that there is no dispute of material

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<sup>1</sup> See docket 24.

<sup>2</sup> See, e.g., Frehling Enter., Inc. v. International Select Group, Inc., 192 F.3d 1330, 1335 (11<sup>th</sup> Cir. 1999) (setting forth the seven factors the Eleventh Circuit considers in assessing whether or not a likelihood of consumer confusion exists) (citing Lone Star Steakhouse & Saloon, Inc. v. Longhorn Steaks, Inc., 122 F.3d 1379, 1382 (11<sup>th</sup> Cir.

fact with regard to the issue that Defendant's 1997 amended mark poses no threat of a potential for confusion with Plaintiff's mark in view of the parties' additional stipulation that there has never been a single instance of actual confusion since Defendant's amended mark began being used in 1997, a fact confirmed by the deposition testimony of Mr. David Ways.<sup>3</sup> In light of this determination, the Court agrees with Defendant's suggested disposition of this case.

Accordingly, it is ordered and adjudged as follows:

- 1) Plaintiff Skeeta's Motion for Summary Judgment (Dkt. 26) is denied.
- 2) Defendant Skeeter's Motion for Summary Judgment (Dkt. 23) is granted.
- 3) The Court determines as a matter of law that there is no likelihood of confusion between Defendant Skeeter's amended design mark and Plaintiff Skeeta's design mark.
- 4) The Court, pursuant to § 37 of the Lanham Act, 15 U.S.C. § 1119, directs the Director of the United States Trademark Office to allow Defendant Skeeter's '275 Application and to dismiss the Cancellation Petitions filed by Defendant Skeeter. As a consequence of this directive, Defendant Skeeter's counterclaim is rendered moot.
- 5) Each Party shall bear their own attorney fees and costs.
- 6) The Clerk is directed to enter judgment for Defendant and to close this case.

**DONE AND ORDERED** at Tampa, Florida, on September 25, 2009.

s/Richard A. Lazzara  
**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

**COPIES FURNISHED TO:**  
Counsel of Record

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1997)).

<sup>3</sup> See docket 25.