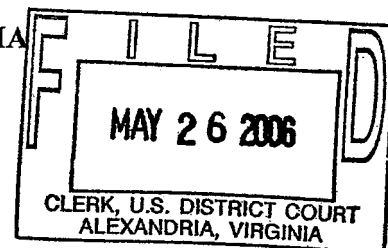


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division



GoSMILE, INC.,)
)
Plaintiff,)
)
v.)
)
JON W. DUDAS,)
in his official capacity as)
Undersecretary & Director of the)
United States Patent & Trademark)
Office, *et al.*,)
)
Defendants.)
)

Civil Action No. 1:06cv291

AGREED ORDER OF REMAND AND DISMISSAL

The instant action revolves around a decision of the Trademark Trial and Appeal Board (“TTAB”), an administrative tribunal of the United States Patent and Trademark Office (“USPTO”). In January 2006, the TTAB issued a decision (“TTAB decision”) denying plaintiff’s application for a trademark on “GOSMILE PM.” Plaintiff filed this action on March 17, 2006,¹ challenging the TTAB’s decision pursuant to the provisions of the Lanham Act. See 15 U.S.C. § 1071(b).

Since the filing of this complaint, the parties – through counsel – have consulted and agreed to an order dismissing the action without prejudice and remanding the action to the USPTO for further proceedings, subject to the following conditions:

1. Initially, upon remand to the USPTO, plaintiff will be entitled to present evidence not

¹The Office of the United States Attorney for this district received a copy of plaintiff’s summons and complaint on March 27, 2006.

previously submitted to the USPTO during prosecution of U.S. Trademark Application Serial No. 76/518,244 (“‘244 application”) in support of its position that the mark “GOSMILE PM” is a protectible and registrable mark.

2. The parties acknowledge and agree that a purpose of this stipulated dismissal is to reopen prosecution of the ‘244 application to have the USPTO consider additional evidence regarding the registrability of the “GOSMILE PM” mark. Should plaintiff ultimately receive an unfavorable decision from the USPTO upon reopening prosecution of the ‘244 application, plaintiff retains all possible remedy options, including filing a district court action under 15 U.S.C. § 1071(b).

3. The parties further acknowledge and agree that the dismissal of this case and the underlying TTAB Decision, issued on January 20, 2006, will not operate as *res judicata* or collateral estoppel in any proceeding on the issues of protectibility and/or registrability of the “GOSMILE PM” mark, as long as GoSmile presents evidence not previously submitted to the USPTO during earlier prosecution of the ‘244 application.

For the foregoing reasons, it is hereby

ORDERED that this action is hereby DISMISSED WITHOUT PREJUDICE and REMANDED to the United States Patent and Trademark Office pursuant to the conditions identified above; and it is further

ORDERED that each party will bear its own fees and costs.

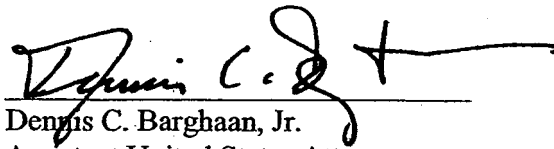
Date:

May 24, 2006


UNITED STATES DISTRICT JUDGE

WE ASK FOR THIS:

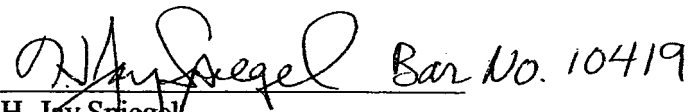
Date: 5/25/06



Dennis C. Barghaan, Jr.
Assistant United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
Tel: (703) 299-3891
Attorneys for Defendants

Of Counsel: John M. Whealan
Nancy C. Slutter
Robert J. McManus
United States Patent and Trademark Office, Office of the Solicitor
P.O. Box 15667
Arlington, VA 22215

Date: 5/25/06



H. Jay Spiegel
H. Jay Spiegel & Associates
P.O. Box 11
Mount Vernon, Virginia
Tel: (703) 619-0101
Attorneys for Plaintiffs