

ESTTA Tracking number: **ESTTA28016**

Filing date: **03/11/2005**

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

Proceeding	91164190
Party	Plaintiff Clif Bar Inc. Clif Bar Inc. 1610 Fifth Street Berkeley, CA 94710
Correspondence Address	E. Lynn Perry THELEN REID & PRIEST LLP 101 Second Street, Suite 1800 San Francisco, CA 64105
Submission	Motion to Suspend for Civil Action
Filer's Name	E. Lynn Perry
Filer's e-mail	trademark@thelenreid.com, lperry@thelenreid.com
Signature	/E. Lynn Perry/
Date	03/11/2005
Attachments	MOTION TO SUSPEND.PDF (15 pages)

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

CLIF BAR, INC.)	Opposition No.: 91164190
)	
Opposer,)	
)	Serial No. 76/531,830
v.)	Mark: MOJO NUTS
)	
MOJO NUTS, LLC,)	MOTION TO SUSPEND OPPOSITION
)	FOR CIVIL ACTION
Respondent.)	
_____)	
)	

BOX TTAB NO FEE
Commissioner for Trademarks
P.O. Box 1451
Arlington, VA 22313-1451

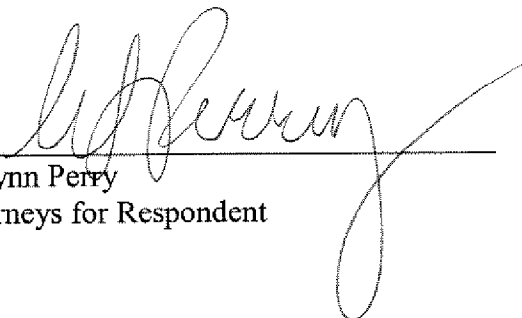
CLIF BAR, INC., Opposer herein, hereby moves the Board pursuant to TBMP
§510.02(a) to suspend this Opposition pending the outcome of a civil action, namely Civil
Action Number C 05 0586 RS, pending in U.S. District Court, Northern District.

The identified civil action has a bearing on this Opposition and involves issues in common with those in this proceeding.

Respectfully submitted,

THELEN REID & PRIEST LLP

Dated: March 10, 2005

By: 
E. Lynn Perry
Attorneys for Respondent

THELEN REID & PRIEST LLP
101 Second Street, Suite 1800
San Francisco, CA 94105
Telephone: (415) 369-7505
Facsimile: (415) 369-8930
Attorney Docket No. 034640-85
SF #932982 v1

ORIGINAL
FILED
05 MAR -2 PM 3:49
CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CLIF BAR INC., a California corporation,

Plaintiff,

v.

MOJO NUTS, LLC, a Colorado Limited
Liability Company,

Defendant.

Case No.

0896

RS

COMPLAINT FOR FEDERAL
TRADEMARK INFRINGEMENT AND
UNFAIR COMPETITION; DILUTION,
INJURY TO BUSINESS REPUTATION,
FALSE ADVERTISING, AND UNFAIR
COMPETITION UNDER CALIFORNIA
STATE LAW

DEMAND FOR JURY TRIAL

Plaintiff CLIF BAR INC. alleges as follows:

NATURE OF ACTION

1. This action seeks preliminary and permanent injunctive relief against the following acts of Defendant: willful infringement of Plaintiff's trade marks and unfair competition, in violation of the Lanham Trademark Act of 1946, as amended, Title 15, United States Code, §§1051 *et seq.* (the "Lanham Act"); and dilution, injury to business reputation, false advertising, and unfair competition under California state law.

2. Plaintiff CLIF BAR INC. is a California corporation whose place of business is 1610 Fifth Street, Berkeley, California, 94710.

3. Plaintiff is the lawful owner of the trademark MOJO BAR, which is the subject of

COPY

1 Federal Registration No. 2,687,196, issued February 11, 2003, filed December 12, 2000, and Federal
2 Registration No. 2,697,701, issued March 18, 2003 (the "MOJO BAR Mark") filed May 17, 2002,
3 covering "ready to eat high energy nutrition bars for meal replacement" and "grain based ready to eat
4 energy food bars." These registrations are in force and incontestable. By virtue of the filing date for
5 its earlier registration, the MOJO BAR Mark has a priority date of December 12, 2000. The MOJO
6 BAR Mark has been in use since at least April 2002. Plaintiff also owns the domain name
7 www.mojobar.com, which was registered in 2002. That address points to www.clifmojo.com, also
8 owned by Plaintiff. Plaintiff operates a website at that Internet address. Plaintiff also uses the mark
9 MOJO to refer to its products and Plaintiff's customers know Plaintiff's product by the shorthand
10 MOJO.

11 4. Upon information and belief, Defendant MOJO NUTS, INC., is a Colorado Limited
12 Liability Company with an address at 517 Big Thompson Avenue P.O. Box 864, Estes Park, Colorado
13 80517. Defendant is in the business of manufacturing snack foods made from processed and
14 unprocessed nuts and processed edible seeds. Defendant also owns the domain name
15 www.mojonuts.com, which was registered in 2003. Defendant operates a website at that Internet
16 address. Defendant's MOJO NUTS-branded products are offered and delivered to customers via the
17 Internet and through other means.

18 5. Long after Plaintiff commenced use of the MOJO BAR Mark and filed its applications
19 which resulted in the incontestable registrations noted above, Defendant adopted and began using the
20 confusingly similar mark MOJO NUTS (the "Imitation Mark"), and registered and began use of the
21 Internet domain name www.mojonuts.com (the "Domain Name"). Defendant uses the Imitation Mark
22 and the Domain Name in connection with snack food products which are very closely related to the
23 products with which Plaintiff uses its MOJO BAR Mark.

24 6. Unless Defendant is enjoined from continuing to use the Imitation Mark and the
25 Domain Name to promote Defendant's products, the MOJO BAR Mark will continue to be infringed
26 and will become further diluted, resulting in irreparable injury to Plaintiff, confusion of consumers,
27 and harm to the public, thereby destroying the distinctive quality of the mark that Plaintiff has spent
28 considerable time and resources developing and promoting.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.