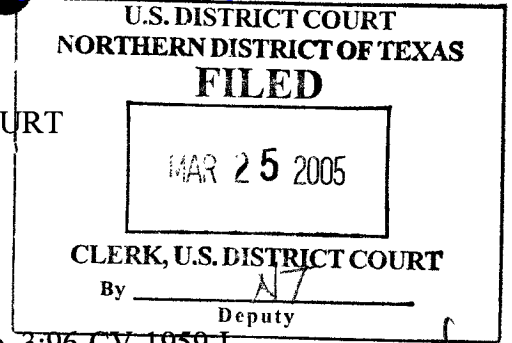


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**ORIGINAL**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
Dallas Division



DIPPIN' DOTS, INC., et. al. §  
Plaintiffs, §  
v. §  
THOMAS R. MOSEY, et. al., §  
Defendants, §  
v. §  
FROSTY BITES DISTRIBUTOR §  
OF FLORIDA, INC., et. al, §  
Intervenors, §  
v. §  
F. ROBERT ESTY, et. al., §  
Defendant. §

Civil Action No. 3:96-CV-1959-L

(consol. with 3:01-CV-1532-L)  
MDL Action No. 1377  
consol. actions also include  
3:00-cv-01687 - P  
3:00-cv-01307 - L  
3:00-cv-01686 - M

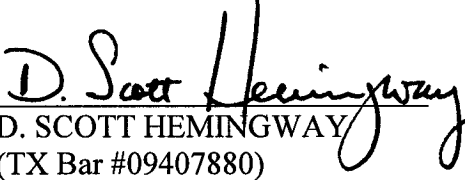
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**PLAINTIFFS NOTICE OF APPEAL**

Notice is hereby given that Plaintiffs in the above-named case, as consolidated with the other above-identified actions, hereby appeals to the United States Court of Appeals for the Federal Circuit all rulings from the District Court related to U.S. Patent No. 5,126,156, as well as all rulings from the District Court related to fraud on the Patent Office, antitrust claims, all claims made by Plaintiffs, all counterclaims against the Plaintiffs, and the award of attorney fees, costs and interest against Plaintiffs.

The Final Judgment in this matter was entered on February 28, 2005 (attached hereto as Exhibit 1), and a Judgment was entered on June 3, 2004 (attached as Exhibit 2), not certified as final pursuant to Order of August 6, 2004 (attached as Exhibit 3).

Respectfully submitted,

  
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Counsel for Dippin' Dots and  
Curt D. Jones

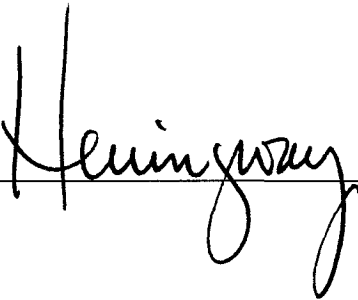
**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document has been served on all the following counsel of record by First Class Mail indicated this 25<sup>th</sup> day of March, 2005.

Rudolf O. Siegesmund, Esq.  
4627 North Central Expressway,  
Suite 2000  
Dallas, Texas 75205-4022

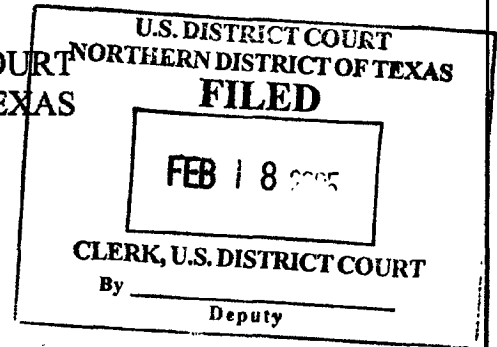
Robert G. Oake, Jr., Esq.  
Law Offices of Robert G. Oake, Jr.  
101 W. McDermott  
Suite 109  
Allen, Texas 75013

John P. Fry, Esq.  
Alton & Bird, LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309

  
\_\_\_\_\_



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



DIPPIN' DOTS, INC., et al.,

Plaintiffs,

v.

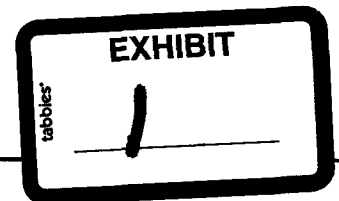
THOMAS R. MOSEY, et al.,

Defendants.

CIVIL ACTION FILE  
NO. 3:96-CV-1959-L (consolidated  
with 3:01-CV-1532-L)

FINAL JUDGMENT

These are related actions brought by the Plaintiffs for patent infringement pursuant to the Patent Act (35 U.S.C. § 100 *et seq.*), trade dress and trademark infringement pursuant to the Lanham Act (15 U.S.C. § 1125), alleged violations of the Uniform Trade Secrets Act (18 U.S.C. § 1905), and various state statutory and common law causes of action, as well as counterclaims brought by the Defendants for a declaration that Plaintiffs' patent is invalid, unenforceable, not infringed, that the Plaintiffs violated the antitrust laws of the United States, and various state common law causes of action.



This action was filed by Plaintiffs Dippin' Dots, Inc. and its founder, Curt Jones ("Jones") (collectively, "DDI"). DDI is engaged in the business of manufacturing and distributing flash frozen novelty ice cream. The Defendants in this action are corporations and individuals engaged in the manufacture, distribution, or sale of competing flash frozen novelty ice cream products known as Frosty Bites and Mini Melts. Jones, the Dippin' Dots founder, applied for and received United States Patent No. 5,126,156 ("the '156 patent") for the method DDI uses to make a flash frozen ice cream.

In 1996, DDI sued Defendants Thomas R. Mosey ("Mosey") and International Laser Expressions, Inc., doing business as Dots of Fun ("ILE") in Dallas, Texas in Cause of Action 3:96-CV-1959-L (the "1959 Case"). In 1998, DDI amended the complaint to include Dots of Fun, Ltd. ("DOF") and Nicholas Angus ("Angus"). Beginning in April 2000, DDI filed a series of lawsuits against former DDI dealers and distributors around the country alleging numerous causes of action. At that time, DDI also amended its complaint in the 1959 Case, adding Frosty Bites, Inc., which later became known as Mini Melts, Inc. ("Mini Melts"), to the litigation. (Mosey, ILE, DOF, Angus, and Mini Melts are hereinafter referred to as the "Mosey Parties"). In 2000, DDI also added F. Robert Esty, Jr., Frosty Bites Retail of Florida, Inc., Barry Jay Bass, Julia Ann Bass, Jack Miller, James Perez, Jeanine Matone, Victor Bauer,

Daniel Kilcoyne, Shawn P. Kilcoyne, Daniel Dopko, Edmund Abramson, and Frosty Bites Distribution, LLC (the "Distribution Parties") as defendants to the patent litigation. Following this addition, Frosty Bites Distributor of Florida, Inc., Frosty Bites Distributor of Georgia, Inc., Frosty Bites of Michigan, Inc., J&J Concessions of New Jersey, Inc., Frosty Bites of New York, LLC, Frosty Bites Ice Cream Development, LLC, and Frosty Bites Ice Cream Co., LLC (the "Intervenors") all intervened in the Texas Case DDI filed against the Mosey Parties. In early 2001, all of these cases were transferred to the Northern District of Georgia by the Judicial Panel on Multidistrict Litigation for consolidation (the "MDL Litigation").<sup>1</sup>

In August 2001, the Mosey Parties filed suit in Dallas, Texas (Civil Action No. 3-01-CV-1532-M (the "1532 Case")) against DDI seeking a declaratory judgment that they had not misappropriated any trade secrets or infringed any enforceable trade dress rights, to which DDI counterclaimed for misappropriation of trade secrets, statutory and common law trademark and trade dress infringement, and various state law unfair competition causes of action. The 1532 Case was later consolidated with

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<sup>1</sup>The MDL Litigation consisted of eight related actions. In five of those cases, DDI sued various Frosty Bites manufacturers and distributors for patent infringement, trademark and trade dress infringement, misappropriation of trade secrets, and breach of contract. The other three actions were brought by Frosty Bites' manufacturers and distributors seeking a declaratory judgment that the '156 patent is invalid and unenforceable.

the 1959 Case. All claims other than the Defendants' claims for attorneys' fees having been resolved by summary judgment, jury trial or voluntary dismissal,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is rendered in favor of the Defendants as follows:

1. With regard to the Frosty Bites product, the Defendants do not infringe United States Patent No. 5,126,156, either literally or under the doctrine of equivalents;
2. DDI's putative trade secrets are not protected by the Uniform Trade Secrets Act under Kentucky law;
3. The Defendants did not violate the Uniform Trade Secrets Act;
4. The Mosey Parties did not infringe DDI's alleged trade dress;
5. The Mosey Parties did not infringe DDI's trademark(s);
6. The Frosty Bites product and the method to make the Frosty Bites product do not infringe United States Patent No. 5,126,156;
7. The Defendants' sham litigation claims are dismissed with prejudice;
8. Curt Jones' sales of cryogenically frozen ice cream before March 6, 1988, are prior art to the '156 patent;
9. All of the claims of the '156 patent are invalid as obvious;
10. The relevant market in this case is the manufacture of and sale of



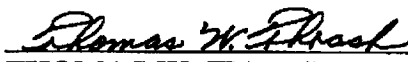
cryogenically frozen pieces of ice cream in the United States;

11. DDI possessed monopoly power in the relevant market;
12. DDI willfully acquired or maintained this monopoly power through restrictive or exclusionary conduct;
13. DDI's conduct occurred in or affected interstate commerce;
14. DDI's monopolization of the relevant market directly and proximately caused damage to the business or property of the Defendants;
15. The actual damages of Mini Melts Inc. f/k/a Frosty Bites, Inc. were \$0 (none);
16. The actual damages of Frosty Bites Distribution were \$0 (none);
17. The '156 patent is unenforceable due to inequitable conduct during the prosecution of the patent before the United States Patent and Trademark Office; and
18. All of DDI's and the Defendants' state law claims that were to be tried in the second trial are dismissed with prejudice, and each party shall bear its own costs with respect to those claims.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

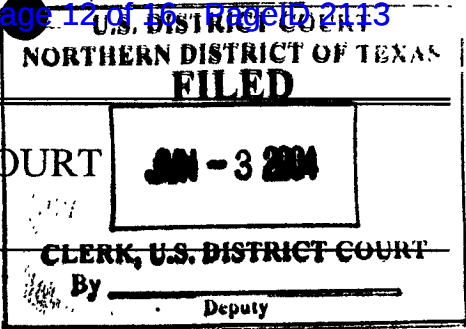
1. The preliminary injunction entered on March 31, 1997 is dissolved;
2. Frosty Bites Distribution is entitled to \$676,675.46 in attorney's fees and costs under the Clayton Act; and
3. Dippin' Dots, Inc. and Curt Jones shall pay the Defendants' costs on all claims other than the dismissed state law claims.

SO ORDERED, this 12 day of February, 2005.

  
\_\_\_\_\_  
THOMAS W. THRASH, JR.  
United States District Judge

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AO450 (Rev. 5/85) Judgment in a Civil Case



ORIGINAL

UNITED STATES DISTRICT COURT

DISTRICT OF

DIPPIN' DOTS, INC., et al.,

JUDGMENT IN A CIVIL CASE

V.

Case Number: 3:96-CV-1959-L

THOMAS R. MOSEY, et al.,

**Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

**Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that Frosty Bites Distribution's Motion for Attorney's Fees and Costs Under the Clayton Act is Granted. Judgment is entered in favor of the Defendant Frosty Bites Distribution in the sum of \$676.675.46, with post judgment interest from October 20, 2003.

JUN 3 2004

CLERK OF COURT

Date

Clerk

*R. Johnson*

(By) Deputy Clerk

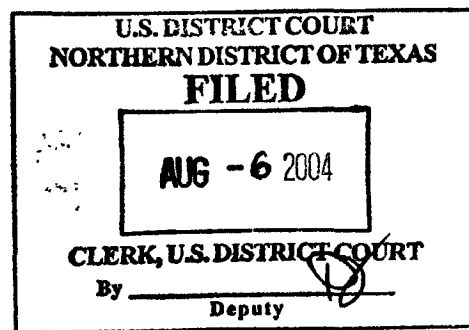


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**ORIGINAL** IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

DIPPIN' DOTS, INC., et al., )  
)  
Plaintiffs, )  
)  
vs. )  
)  
THOMAS R. MOSEY, et al., )  
)  
Defendants, )  
)  
vs. )  
)  
FROSTY BITES DISTRIBUTOR )  
OF FLORIDA, INC., et al., )  
)  
Intervenors, )  
)  
vs. )  
)  
F. ROBERT ESTY, et al., )  
)  
Defendants. )

CIVIL ACTION NO.  
3:96-CV-1959-L



**ORDER**

Pursuant to this Court's July 13, 2004 Status Conference in the above-referenced matter, the Court ORDERS as follows:

No order or judgment heretofore entered by this Court in the above-styled action shall be deemed a final judgment from which an appeal can be taken at this time. The Court will not certify a final judgment until all claims against all parties are resolved.



— J

Pursuant to the Parties' agreement, all Notices of Appeal filed by Plaintiffs Dippin' Dots, Inc. and Curt D. Jones (collectively "DDI") in this matter are voluntarily DISMISSED and VACATED without prejudice to refile. Also pursuant to the Parties' agreement, the fact that DDI had filed prior notices of appeal does not divest this Court of continuing jurisdiction over this matter.

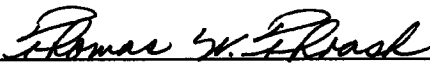
In accordance with the foregoing, the Court's June 3, 2004 Order granting Defendant Frosty Bites Distribution LLC's ("Frosty Bites Distribution") Motion for Attorneys' Fees and Costs is not a final order subject to appeal or execution. The Court hereby STAYS any execution of the June 3, 2004 attorneys' fees judgment by Frosty Bites Distribution until all claims against all parties are resolved and all matters before this Court are resolved. DDI need not post any bond to stay such execution.

This second portion of the bifurcated trial in this matter will commence on October 4, 2004 in Dallas, Texas and will last for approximately two (2) weeks. Plaintiffs will have fifteen (15) hours, excluding opening and closing statements, to argue their case and Defendants will have fifteen (15) hours, excluding opening and closing statements to argue their case.

No further motions for summary judgment shall be permitted. However, the parties are permitted to file motions in limine affecting the presentation of evidence at trial.

Pursuant to the Parties' agreement, the time for expert depositions in this matter is extended until September 14, 2004.

SO ORDERED this 6 day of August, 2004



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THOMAS W. TRASH, JR.  
United States District Judge