

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

CREATIVE COMPOUNDS, LLC,
Plaintiff-Appellant,

v.

STARMARK LABORATORIES,
Defendant-Appellee.

2010-1445

Appeal from the United States District Court for the Southern District of Florida in case no. 07-CV-22814, Judge Alan S. Gold.

ON MOTION

Before GAJARSA, SCHALL, and MOORE, *Circuit Judges.*
SCHALL, *Circuit Judge.*

O R D E R

Creative Compounds, LLC moves for a stay, pending disposition of this appeal, of the permanent injunction entered by the United States District Court for the Southern District of Florida. Starmark Laboratories opposes. Creative replies. Starmark moves for attorney fees and

sanctions related to the motion for a stay and "Creative's two prior premature appeals to this Court and a petition for writ of mandamus." Creative opposes.

To obtain a stay, pending appeal, a movant must establish a strong likelihood of success on the merits or, failing that, nonetheless demonstrate a substantial case on the merits provided that the harm factors militate in its favor. *Standard Havens Prods. v. Gencor Indus.*, 897 F.2d 511, 513 (Fed. Cir. 1990) (citing *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). In deciding whether to grant a stay, pending appeal, this court "assesses the movant's chances of success on the merits and weighs the equities as they affect the parties and the public." *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 835 F.2d 277, 278 (Fed. Cir. 1987); see also *Standard Havens Prods.*, 897 F.2d at 513.

Based on the arguments in the motions papers, and without prejudicing the ultimate disposition of this case by a merits panel, we determine that Creative Compounds has not met its burden to obtain a stay of the permanent injunction. We similarly determine that Starmark has not demonstrated that sanctions and attorney fees are warranted.

Upon consideration thereof,

IT IS ORDERED THAT:

The motions are denied.

FOR THE COURT

NOV 18 2010

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Matthew A. Rosenberg, Esq.
Frederick A. Tecce, Esq.

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

NOV 18 2010

JAN HORBALY
CLERK