

August 31, 2001

**BY EXPRESS MAIL**

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

**Attention: Juan M. Porter**  
**Legal Assistant, TTAB**

**Re: Cancellation No. 32,146 (Mailed 07/06/01)**  
**Mark: TCB HERRINGTON'S TEDDY BEAR CLUB & Design**  
**Reg. No.: 2,372,585**  
**Reg. Date: August 1, 2000**  
**Registrant: Herrington & Company, Inc.**  
**Our Ref.: 40362.10**

08-31-2001  
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

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AUG 31 10 11 AM '01

Dear Mr. Porter:

Enclosed herewith is Registrant's Answer to the Petition for Cancellation filed by Petitioner, Boyds Collection, Ltd. So that we may have a timely record of receipt of the enclosed, please date-stamp the enclosed, stamped, self-addressed post card, and deposit it into the U.S. mail. Please direct all correspondence regarding this application to my attention.

Sincerely yours,

*Elizabeth C. Moreno*  
Elizabeth C. Moreno  
Attorney at Law

Enclosure

LosAngeles/55607.1

*SS*

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

**IN THE MATTER OF TRADEMARK REGISTRATION NO. 2,372,585  
Registered August 1, 2000**

**BOYDS COLLECTION, LTD.,**

Petitioner,

vs.

**HERRINGTON & COMPANY, INC.**

Registrant

**Cancellation No. 32,146**

**Mark: TBC HERRINGTON'S TEDDY BEAR CLUB  
& Design**

**Registration No.: 2,372,585**

**Registration Date: August 1, 2000**

**REGISTRANT'S ANSWER TO THE PETITION FOR CANCELLATION**

HERRINGTON & COMPANY, INC. ("Registrant"), the owner of the registration identified above, in response to the Notice dated July 6, 2001, instituting this cancellation proceeding, hereby responds to the Petition for Cancellation in this matter filed by BOYDS COLLECTION, LTD., ("Petitioner") on or about June 26, 2001, as follows:<sup>1</sup>

1. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in the first paragraph on page 1 of the Petition for Cancellation.

2. Except to admit that Registrant owns U.S. Trademark Registration No. 2,372,585 registered on August 1, 2000, for the mark TBC HERRINGTON'S TEDDY BEAR CLUB & Design for "toys, namely, plush toys, stuffed toys, stuffed animals, and play figures" and to specifically deny that Registration No. 2,372,585 covers "sporting goods," Registrant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in the second paragraph on page 1 of the Petition for Cancellation.

3. Registrant denies the allegations contained in the first paragraph on page 2 of the Petition for Cancellation.

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<sup>1</sup> Because Petitioner did not draft its Petition for Cancellation using numbered paragraphs, Registrant is unable to answer the claims in correspondence with the numbered paragraphs of the Petition for Cancellation, as set forth in Section 318.02(a) of the TBMP. As such, Registrant responds to each paragraph by referencing its placement on the page of the Petition for Cancellation.

4. Registrant denies the allegations contained in the second paragraph on page 2 of the Petition for Cancellation.

5. Registrant denies the allegations contained in the third paragraph on page 2 of the Petition for Cancellation.

6. Registrant denies the allegations contained in the fourth paragraph on page 2 of the Petition for Cancellation.

7. Registrant denies the allegations contained in the fifth paragraph on page 2 of the Petition for Cancellation.

**AFFIRMATIVE DEFENSES**

In further answer to the Petition for Cancellation, the Registrant asserts that:

8. The Petition for Cancellation fails to state a claim upon which relief can be granted to Petitioner.

9. The Petition for Cancellation is barred by laches.

10. The Petition for Cancellation is barred by waiver.

11. The Petition for Cancellation is barred by illegality, namely that Petitioner has engaged in unfair competition with Registrant.

WHEREFORE, Registrant Herrington & Company, Inc. prays for judgment dismissing Petition for Cancellation No. 32,146 forthwith, and for such other and further relief as is deemed just and proper.

Dated: August 31, 2001

Respectfully submitted,

SQUIRE, SANDERS & DEMPSEY L.L.P.

By: 

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14th Floor  
Los Angeles, CA 90017-5554  
Telephone: (213) 689-5127  
Attorneys for Registrant  
Herrington & Company, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2001, I served a copy of the foregoing REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION upon petitioner Boyds Collection, Ltd's counsel of record, Michael J. Cherskov, Esq., by mailing a true and correct copy thereof by postage prepaid First Class United States Mail to the following address:

Michael J. Cherskov  
CHERSKOV & FLAYNIK  
The Civic Opera Building, Suite 1447  
20 N. Wacker Drive  
Chicago, IL 60606

DATED: August 31, 2001

By: Esther Rodriguez  
Name: Esther Rodriguez