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12-04-2001

U.S. Patent & TMOs/TM Mail Rcpt Dt. #58

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

In the Matter of Registration No.: 1,934,369
Registration date: November 7, 1995
For the Mark: **BARBARA GERWIT**
For: **clothing, namely, shirts, blouses, T-shirts, skirts, pants,
shorts, jackets, cardigans, sweaters, tops, bottoms**

KCS-Miami, Inc.

Petitioner,

Cancellation No.

vs.

Barbara Gerwit

Registrant

_____)

PETITION FOR CANCELLATION

KCS-Miami, Inc., a corporation of Florida, with its principal place of business at 1050 East 23 Street, Hialeah, Florida, 33013, believes that it, and will be, damaged by the above-identified registered mark and hereby petitions to cancel the same.

As grounds for cancellation, it is alleged that:

12/05/2001 CMAY11 00000146 190129 1934369

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1. Registrant has abandoned the mark.

2. On February 8, 2001, Petitioner filed a trademark application for the mark "**THERAPY BY BARBARA GERWIT**", for clothing, namely, golf shirts, dresses, skirts, jumpers, cardigans, suits, overcoats, overalls, trousers, jackets, singlets, lingerie, belts, knit shirts, sport shirts, sweat shirts, T shirts, pants, sweaters, socks, ties, bow ties, shorts, beach visors, beachwear, swimsuits, hats, caps, beanie caps, blouses, underwear, jackets, pull overs and jerseys, in international class 25, Serial No. 76/206,758. Petitioner's application has been rejected by the Examiner, based on the previous registration of Registrant's mark "**BARBARA GERWIT**", Registration No. 1,934,369.

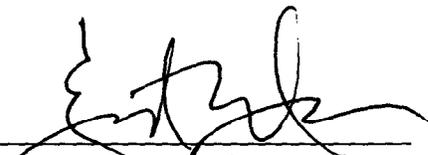
3. The Examiner's position that Registrant's above-identified mark so resembles Petitioner's mark as to be likely, when used in connection with registrant's services cited in its registration, to cause confusion, or to cause mistake, or to deceive, as to the source or sponsorship of the services in question prevents Petitioner from availing itself of the benefits of the Lanham Act.

4. For the aforesaid reasons, Petitioner is being damaged by the registration of the mark identified above.

WHEREFORE, Petitioner prays that said Registration No. 1,934,369 be cancelled.

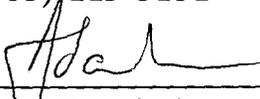
I, Ernesto Rodriguez, hereby state that all statements made herein of his own knowledge are true and all statements made on information and belief are believed to be true; and further, that these were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of any registration granted on the above petition.

KCS-Miami, Inc.
Petitioner

By: 
Ernesto Rodriguez
Vice-President

Respectfully submitted,

SANCHELIMA & ASSOC. P.A.
Attorneys for Petitioner:
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By:  11/28/01
Jesus Sanchelima, Esq.

CERTIFICATE OF MAILING

I hereby certify that this Petition to Cancel is being deposited with the United States Postal Service's "First Class Mail", pursuant to 37 C.F.R. § 1.10 in an envelope addresses to the Assistant Commissioner of Trademarks, 2900 Crystal Drive, Box: TTAB/FEE, Arlington, VA 22203-3513 on November 28, 2001.

Dated: 11/28/01

By: 

Gabriela Cortes

Paralegal

Sanchelima & Associates, P.A.
Attorneys at Law



Patent, Trademark & Copyright Law

J. Sanchelima, Patent Attorney
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Albert Bordas, Reg. Patent Attorney

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Monday, November 26, 2001

Assistant Commissioner of Trademarks
BOX: TTAB/ FEE
2900 Crystal Drive
Arlington, Virginia 22203-3513

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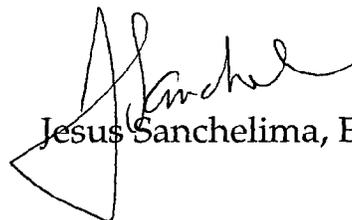
Re: Petition to Cancel Registration for the mark Barbara Gerwit
Registrant: Barbara Gerwit, individual
Reg. No: 1,934,369
Issue Date: November 7, 1995
Attorney Docket No: 21657

Honorable Commissioner:

Kindly charge our **Deposit Account No: 19-0129** the \$300.00 filing fee for the petition for cancelation of the above-referenced trademark registration.

Kindly acknowledge receipt of these documents by stamping and returning the enclosed self-addressed, postage-paid postcard.

Very truly yours,


Jesus Sanchelima, Esq.

JS:gc

Enclosures: petition and postcard