

IN THE 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 11, 1995

Trademark: BARBARA GERWIT

For: clothing; namely shirts, blouses, T-shirts, skirts, pants, shorts, jackets, cardigans,
sweaters, tops, bottoms

02-21-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #71

KCS-Miami, Inc.,

Petitioner,

v.

Cancellation No: 92040135

BARBARA GERWIT,

Registrant.

ANSWER

Registrant, KEN GERWIT, an individual, and owner of the Registered Mark
BARBARA GERWIT, with his principal place of business at 425 East Tenth Court,
Hialeah, Florida 33010, hereby files his Answer to the Petition for Cancellation, and
states in defense of the above, identified Registered Mark:

1. Registrant denies the allegation asserted by the petitioner in paragraph 1.,
of the Petition for Cancellation and demands strict proof thereof.
2. Registrant is without knowledge as to the allegation asserted by the
petitioner in paragraph 2., of the Petition for Cancellation and demands strict proof
thereof.

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3. Registrant is without knowledge as to the allegation asserted by the petitioner in paragraph 3., of the Petition for Cancellation and demands strict proof thereof.

4. Registrant denies the allegation asserted by the petitioner in paragraph 4., of the Petition for Cancellation and demands strict proof thereof.

WHEREFORE, Registrant prays that this Honorable Trademark Trial and Appeal Board deny the Petition for Cancellation and reaffirm Registration No: 1,934,369 with all rights, benefits, and protections afforded under the Lanham Act.

AFFIRMATIVE DEFENSES

1. As to the Registrants First Affirmative Defense, the Registrant avers that Petitioner has unclean hands to assert its Petition for Cancellation, inasmuch as Petitioner failed to withdraw Trademark Application Serial Number 76206758 in October 2001 as Petitioner agreed to do at Registrant's demand, and now Petitioner should be denied its Petition for Cancellation.

2. As to the Registrants Second Affirmative Defense, the Registrant avers that Petitioner is estopped from asserting its Petition for Cancellation, inasmuch as Petitioner agreed to withdraw Trademark Application Serial Number 76206758 in October 2001 at Registrant's insistence at a time when Registrant and Petitioner ceased to continue a business relationship, and now Petitioner's Petition for Cancellation should be denied.

3. As to the Registrants Third Affirmative Defense, the Registrant avers that Petitioner is estopped from asserting its Petition for Cancellation, inasmuch as Trademark

Application Serial Number 76206758 was filed on behalf of Registrant by Petitioner at a time that Registrant and Petitioner engaged in a business relationship that did not include the transfer of rights to Petitioner of the Registrant's Registered Mark, but only the use of the Registrant's Registered Mark during the term of the business relationship, which ended in October 2001, and now Petitioner should be denied its Petition for Cancellation.

Respectfully submitted this 18th day of February 2002.

WALLIS & WALLIS
Attorneys for Registrant
2637 East Atlantic Boulevard, #210
Pompano Beach, Florida 33062
Ph: 954.785.3573
Fx: 954.366.4519

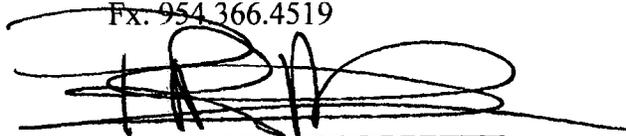
By: 

Peter E.S. Wallis

CERTIFICATE OF SERVICE

I HERBY CERTIFY that this Answer was filed with the United States Patent and Trademark Office, Assistant Commissioner of Trademarks, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202, and Jesus Sanchelima, Esq., Sanchelima & Associates, P.A., Attorney for Petitioner, 235 SW LeJeune Road, Miami, Florida 33134 via the United States Postal Service in accordance with 37 C.F.R §2.119(a), this 18TH day of February 2002.

PETER E.S. WALLIS
WALLIS & WALLIS
Attorneys for Registrant
2637 East Atlantic Boulevard, #210
Pompano Beach, Florida 33062
Ph: 954.785.3573
Fx: 954.366.4519



Peter E.S. Wallis

T7A13



Wallis & Wallis

Professional Association
Attorneys at Law

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Peter E.S. Wallis • Joan Martino Wallis

2637 East Atlantic Boulevard, #210
Pompano Beach, Florida 33062-4939
Ph: 954.785.3573 • Fx: 954.366.4519
Peter's Mobile: 954.540.1959 • Joan's Mobile: 954.540.6244
Email: WallisEsq@mediaone.net

February 18, 2002

Via: USPS – Certified Mail Return Receipt Requested

United States Patent and Trademark Office
Assistant Commissioner of Trademarks
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202

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Honorable Commissioner:

Please be advised that the undersigned represents the registrant of the mark "BARBARA GERWIT" Registration No: 1,934,369. Please find enclosed the answer and affirmative defenses to the petitioner's petition for cancellation of the registered mark: "BARBARA GERWIT." A copy of the enclosed answer and affirmative defenses has been forwarded to counsel for the petitioner.

If you have any questions regarding the above, please do not hesitate to contact me.

With best regards,

Peter E.S. Wallis

WALLIS & WALLIS

Enclosures: Answer and Affirmative Defenses