

NO FEE

I, ANGELA RAMIREZ, hereby certify that this document is being deposited with the United States Postal Service as Express Mail, postage prepaid, in an envelope addressed to BOX TTAB, NO FEE, COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VA 22202-3513

Signature: Angela Ramirez
Printed Name of Person Mailing Document: ANGELA RAMIREZ

Express Mail Label Number: EJ587523038US

Date of Deposit: MARCH 14, 2003



03-14-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #2?

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

03 MAR 28 AM 9:30
TRADEMARK TRIAL AND APPEAL BOARD

Drake Elvgren, an individual;
John T. Dillard, an individual; and
Louis K. Meisel, an individual;

Petitioners,

vs.

J. Daniel Vancas,

Registrant.

Cancellation No.: 92040459

Registration Nos.: 2095296 & 2097819

Marks: ELVGREN (STYLIZED)
and
ELVGREN (STYLIZED)

**BOX TTAB
NO FEE
COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
ARLINGTON, VA 22202-3513**

TRANSMITTAL LETTER

In connection with the above-referenced trademark registration cancellation proceedings, transmitted herewith are the following:

(1) Notice of Additional Bankruptcy Stay (4 pages), along with three Exhibits;
and

(2) Postcard.

Please date-stamp the enclosed postcard and return same to the undersigned in acknowledgment of receipt of all transmitted materials.

Respectfully submitted,



Mark W. Good

MWG:pte
March 14, 2003
DAVIS & SCHROEDER, P.C.
P. O. Box 3080
Monterey, CA 93942-3080
Tel. No.: (831) 649-1122
FAX No.: (831) 649-0566
E-mail: mark@NetLawyers.com

NO FEE

I, ANGELA RAMIREZ, hereby certify that this document is being deposited with the United States Postal Service as Express Mail, postage prepaid, in an envelope addressed to BOX TTAB, NO FEE, COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VA 22202-3513

Signature: Angela Ramirez
Printed Name of Person Mailing Document: ANGELO RAMIREZ
Express Mail Label Number: EJ587523038US
Date of Deposit: MARCH 14, 2003



03-14-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #23

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

Drake Elvgren, an individual;
John T. Dillard, an individual; and
Louis K. Meisel, an individual;

Petitioners,

vs.

J. Daniel Vancas,

Registrant.

Cancellation No.: 92040459

Registration Nos.: 2095296 & 2097819

**Marks: ELVGREN (STYLIZED)
and
ELVGREN (STYLIZED)**

NOTICE OF ADDITIONAL BANKRUPTCY STAY

**BOX TTAB
NO FEE
COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
ARLINGTON, VA 22202-3513**

**TO THE PATENT AND TRADEMARK OFFICE AND ALL PARTIES AND THEIR
COUNSEL:**

PLEASE TAKE NOTICE that Registrant J. Daniel VANCAS has filed for bankruptcy twice in the Northern District of California, during the pendency of these cancellation

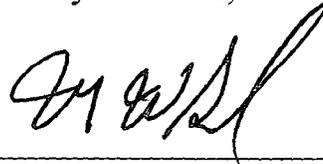
proceedings. (Case Nos. 02-55062, 03-51248) Petitioners first received a Notice of Bankruptcy Stay from Registrant's counsel indicating that this action was stayed effective with Registrant's filing of a voluntary petition on February 27, 2003. A true and correct copy of that stay is attached herewith as **Exhibit "A"**.

Upon conducting research into this filing, Petitioners discovered that the Registrant had previously filed an additional Voluntary Petition for bankruptcy under Chapter 13 on **September 9, 2002, during the pendency of this action.** A true and correct copy of that filing (Case No. 02-55062) filed in the United States Bankruptcy Court for the Northern District of California is attached herewith as **Exhibit "B"**. "The Board will automatically suspend proceedings in a case before it if it comes to the attention of the Board that the defendant has filed a petition for bankruptcy." TBMP § 510.03(a). Under the automatic stay provisions of Section 362 of the United States Bankruptcy Code, 11 U.S.C. 362, a petition for bankruptcy (filed under Section 301, 302, or 303 of the Code, 11 U.S.C. 301, 302, or 303) operates as a stay, inter alia, of the commencement or continuation of a judicial, administrative, or other process against the debtor that was or could have been commenced before the commencement of the bankruptcy case.

This first bankruptcy stay was in effect through January 31, 2003 when the bankruptcy court ordered dismissal of the case. A true and correct copy of the order of dismissal (Case No. 02-55062) is attached herewith as **Exhibit "C"**. Therefore, the case was stayed from September 9, 2002 through January 31, 2003 based on the Registrant's first filing for bankruptcy, and stayed again on February 27, 2003 based on the Registrant's second filing for bankruptcy. All actions

taken by the parties and by TTAB during the period of these stays are therefore void, and TTAB must suspend and reset the dates of this cancellation proceeding accordingly.

Respectfully submitted,



Date: March 14, 2003

Eric Bakri Boustani, Esq.
Mark W. Good, Esq.
DAVIS & SCHROEDER,
A PROFESSIONAL CORPORATION
215 West Franklin, 4th Floor
P. O. Box 3080
Monterey, CA 93942-3080
Telephone: (831) 649-1122
Facsimile: (831) 649-0566
E-mail: eric@NetLawyers.com
mark@NetLawyers.com

Attorneys for Petitioners,

DRAKE ELVGREN,
JOHN T. DILLARD, and
LOUIS K. MEISEL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF ADDITIONAL BANKRUPTCY STAY was mailed FIRST CLASS mail, postage prepaid, this 14th day of March, 2003 to Registrant's counsel:

Mark A. O'Connor, Esq.
HORAN, LLOYD LAW OFFICES
499 Van Buren Street
Post Office Box 3350
Monterey, CA 93942-3350



Mark W. Good

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

Drake Elvgren, an individual;)
John T. Dillard, an individual; and)
Louis K. Meisel, an individual,)
)
Petitioners,)
)
v.)
)
J. Daniel Vancas,)
)
Respondent.)
_____)

Registration Nos. 2095296, 2097819
Cancellation No. 92040459

Marks: "ELVGREN" (Stylized)
and
"ELVGREN" (Stylized)

NOTICE OF BANKRUPTCY STAY

Assistant Commissioner for Trademarks
BOX TTAB - NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513

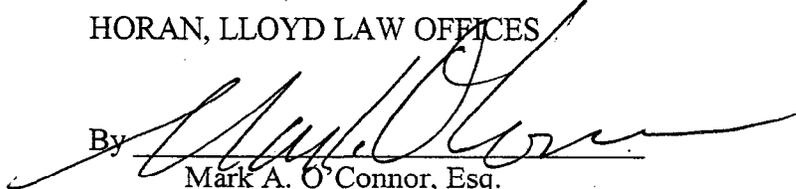
TO THE PATENT AND TRADEMARK OFFICE AND ALL PARTIES AND THEIR COUNSEL:

PLEASE TAKE NOTICE that Respondent J. DANIEL VANCAS has filed bankruptcy and pursuant to the voluntary petition under Chapter 7 of the Bankruptcy Code, further prosecution of this action by Petitioners is stayed. Attached hereto as Exhibit A is a copy of the Chapter 7 Petition filed with the United States Bankruptcy Court, Northern District of California on February 27, 2003.

DATED: February 28, 2003.

HORAN, LLOYD LAW OFFICES

By


Mark A. O'Connor, Esq.
Attorneys for Respondent
J. DANIEL VANCAS
499 Van Buren Street
Post Office Box 3350
Monterey, CA 93942-3350
Telephone: (831) 373-4131
Facsimile: (831) 373-8302

(Official Form 1) (12/02)

United States Bankruptcy Court NORTHERN District of CALIFORNIA		Voluntary Petition
Name of Debtor (If individual, enter Last, First, Middle): VANCAS, JAMES		Name of Joint Debtor (Spouse) (Last, First, Middle): n/a
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names): DAN VANCAS fdba VANGUARD GALLERY		All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names): n/a
Soc. Sec./Tax I.D. No. (if more than one, state all): 562-94-2480		Soc. Sec./Tax I.D. No. (if more than one, state all): n/a
Street Address of Debtor (No. & Street, City, State & Zip Code): 26544 Carmel Rancho Blvd., #1 Carmel, CA 93923		Street Address of Joint Debtor (No. & Street, City, State & Zip Code): n/a
County of Residence or of the Principal Place of Business: Monterey		County of Residence or of the Principal Place of Business: n/a
Mailing Address of Debtor (if different from street address): n/a		Mailing Address of Joint Debtor (if different from street address): n/a
Location of Principal Assets of Business Debtor (if different from street address above): n/a		

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

- Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

- | | |
|---|---|
| <input checked="" type="checkbox"/> Individual(s) | <input type="checkbox"/> Railroad |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Stockbroker |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Commodity Broker |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> Clearing Bank |

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

- | | | |
|--|-------------------------------------|-------------------------------------|
| <input checked="" type="checkbox"/> Chapter 7 | <input type="checkbox"/> Chapter 11 | <input type="checkbox"/> Chapter 13 |
| <input type="checkbox"/> Chapter 9 | <input type="checkbox"/> Chapter 12 | |
| <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding | | |

Nature of Debts (Check one box)

- Consumer/Non-Business Business

Filing Fee (Check one box)

- Full Filing Fee attached
- Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Chapter 11 Small Business (Check all boxes that apply)

- Debtor is a small business as defined in 11 U.S.C. § 101
- Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Statistical/Administrative Information (Estimates only)

- Debtor estimates that funds will be available for distribution to unsecured creditors.
- Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-ovr
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Estimated Assets							
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Estimated Debts							
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Case # 03-51248 gsa

Debtor: James Daniel Vancas

Judge: James R. Gruba
Trustee: John Richardson
341 Mtg: 09:00 AM, 04/08/03
Salinas, CA

Tentative - Notice to be mailed

Chapter 7 Office 5-SJ

Filed: 12:34 PM, 02/27/03

Order for Relief

Clerk, U.S. Bankruptcy Court

Northern District of California

Rept. # 050037403 - CG

TOTAL PAID: \$200.00

by: James Daniel Vancas

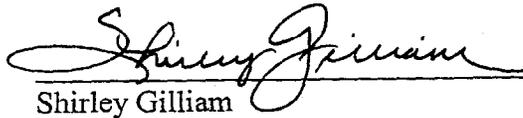
A T T O R N E Y

CERTIFICATE OF SERVICE

This is to certify that I have this day served the following named persons with the foregoing **NOTICE OF BANKRUPTCY STAY** by placing a true and exact copy of said document in the United States mail, addressed to said counsel at his offices, with sufficient postage thereupon to carry the same to its destination at the following address:

Eric Bakri Boustani, Esq.
Mark W. Good, Esq.
Davis and Schroeder
215 West Franklin Street, 4th Floor
Monterey, CA 93940

on this 28th day of February, 2003.


Shirley Gilliam

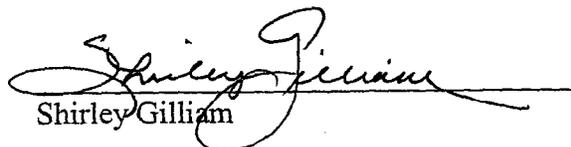
CERTIFICATE OF MAILING BY "EXPRESS MAIL"

"Express Mail" mailing label number: EU879697503US

I hereby certify that the foregoing **NOTICE OF BANKRUPTCY STAY** is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service in an envelope addressed to:

Assistant Commissioner for Trademarks
BOX TTAB - NO FEE
2900 Crystal Drive
Arlington, VA 22202-3513

on this 28th day of February, 2003.


Shirley Gilliam



UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle):

VANCAS, JAMES DANIEL

Name of Joint Debtor (Spouse) (Last, First, Middle):

All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):

All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):

Soc. Sec./Tax I.D. No. (if more than one, state all):

362-94-2480

Soc. Sec./Tax I.D. No. (if more than one, state all):

Street Address of Debtor (No. & Street, City, State & Zip Code):

26544 CARMEL RANCHO BLVD
Carmel, Ca. 93923

Street Address of Joint Debtor (No. & Street, City, State & Zip Code):

County of Residence or of the Principal Place of Business: MONTEREY

County of Residence or of the Principal Place of Business:

Mailing Address of Debtor (if different from street address):

James Daniel Vancas
26544 Carmel Rancho Blvd.
Carmel, Ca. 93923

Mailing Address of Joint Debtor (if different from street address):

Location of Principal Assets of Business Debtor (if different from street address above):

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

- Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
 There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.
 This petition is being filed by a corporation or partnership under chapter 11 and the debtor acknowledges that a Venue Disclosure Form is required to be filed by General Order 97-02.

Type of Debtor (Check all boxes that apply)

- Individual(s)
 Corporation
 Partnership
 Other
 Railroad
 Stockbroker
 Commodity Broker

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

- Chapter 7
 Chapter 9
 Sec. 304 - Case ancillary to foreign proceeding
 Chapter 11
 Chapter 12
 Chapter 13

Nature of Debts (Check one box)

- Consumer/Non-Business
 Business

Filing Fee (Check one box)

- Full Filing Fee attached
 Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Chapter 11 Small Business (Check all boxes that apply)

- Debtor is a small business as defined in 11 U.S.C. § 101
 Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Statistical/Administrative Information (Estimates only)

- Debtor estimates that funds will be available for distribution to unsecured creditors.
 Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors

Table with 6 columns: 1-15, 16-49, 50-99, 100-199, 200-999, 1000-over. Row 1: 1-15 (), 16-49 (), 50-99 (X), 100-199 (), 200-999 (), 1000-over ()

Estimated Assets

Table with 8 columns: \$0 to \$50,000, \$50,001 to \$100,000, \$100,001 to \$500,000, \$500,001 to \$1 million, \$1,000,001 to \$10 million, \$10,000,001 to \$50 million, \$50,000,001 to \$100 million, More than \$100 million. Row 1: \$0 to \$50,000 (X), \$50,001 to \$100,000 (), \$100,001 to \$500,000 (), \$500,001 to \$1 million (), \$1,000,001 to \$10 million (), \$10,000,001 to \$50 million (), \$50,000,001 to \$100 million (), More than \$100 million ()

Estimated Debts

Table with 8 columns: \$0 to \$50,000, \$50,001 to \$100,000, \$100,001 to \$500,000, \$500,001 to \$1 million, \$1,000,001 to \$10 million, \$10,000,001 to \$50 million, \$50,000,001 to \$100 million, More than \$100 million. Row 1: \$0 to \$50,000 (), \$50,001 to \$100,000 (), \$100,001 to \$500,000 (X), \$500,001 to \$1 million (), \$1,000,001 to \$10 million (), \$10,000,001 to \$50 million (), \$50,000,001 to \$100 million (), More than \$100 million ()

Case # 02-55062 mor

Debtor: James Daniel Vancas

Judge: Marilyn Morgan
Trustee: Devin Derham-Burk
341 Mtg: None Assigned

Tentative - Notice to be mailed

Chapter 13 Office 5-SJ
Filed: 02:51 PM, 09/09/02
Order for Relief
Clerk, U.S. Bankruptcy Court
Northern District of California

Rcpt.# 050031268 - PP

TOTAL PAID: \$185.00

by: James Daniel Vancas

ORIGINAL

Voluntary Petition

Name of Debtor(s):

FORM B1, Page 2

JAMES DANIEL VANCAS

(This page must be completed and filed in every case)

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)

Location

NORTHERN DIST. CALIFORNIA S.D. CA.

Case Number:

Date Filed:

Nov, 2000

Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor:

Case Number:

Date Filed:

District:

Relationship:

Judge:

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct. [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

831-622-9034

Telephone Number (If not represented by attorney)

9-9-02

Date

Signature of Attorney

X _____
Signature of Attorney for Debtor(s)

Printed Name of Attorney for Debtor(s)

Firm Name

Address

Telephone Number

Date Bar Number

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X _____
Signature of Attorney for Debtor(s) Date

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

Yes, and Exhibit C is attached and made a part of this petition.
 No

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X _____
Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

FILED

03 JAN 31 PM 12:45

U.S. BANKRUPTCY COURT
SALINAS, CALIFORNIA

1 7MARK L. POPE, #182769
2 NANETTE DUMAS, #148261
3 Office of the United States Trustee
4 280 S. First Street, Suite 268
5 San Jose, Ca 95113-0002
6 Telephone: (408) 535-5525
7 Fax: (408) 535-5532

8 Attorneys for WILLIAM T. NEARY
9 United States Trustee, Region 17

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

JAMES DANIEL VANCAS,
Debtor.

Case No. 02-55062 MM
Chapter 13

Date: January 17, 2003
Time: 10:00 a.m.
Room: Salinas Courtroom

**ORDER DISMISSING CASE WITH
BAR ON FUTURE FILINGS FOR TWO YEARS**

WHEREAS, after notice and a hearing on January 17, 2003, on Motion by United States Trustee's to Dismiss Case With Prejudice and to Bar Future Filings For Two Years and for Sanctions, Mark L. Pope, Esq. appearing for the United States Trustee and James Daniel Vancas, debtor, appearing *in propria persona* and good cause appearing, it is hereby

ORDERED that this case is dismissed; and it is further

ORDERED that the debtor shall be barred from being a debtor under chapters 11 or 13 of Title 11 of the United States Code for two years; and it is further

ORDERED that in the event the debtor files a Voluntary Petition under chapters 11 or 13 within two years from the date of entry of this Order, sanctions shall be automatically assessed against the debtor in the amount of \$5,000 and made payable to the Clerk of the Court by cashier's check or money order within ten days after the filing of such Voluntary

1-30-03

1 Petition.

2 Dated: *Jan. 31, 2003*

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Marilyn Morgan
Marilyn Morgan
United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT
Northern District of California

In re
James Daniel Vancas

Debtor(s)

Case No. 02 - 55062 mmor

Chapter 13

NOTICE
OF DISMISSAL
OF CASE

FILED

FEB 07 2003

CLERK
United States Bankruptcy Court
San Jose, California

T

Notice is given that an order was entered on 01/31/03 dismissing the above-captioned case.

Dated: 2/ 6/03

For the Court:

Gloria L. Franklin
Clerk of Court
United States Bankruptcy Court

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dismiss the Petition to Cancel, pursuant to Fed. R. Civ. P. 12(b)(6) and TBMP § 503, for failure to state a claim on which relief can be granted. Pursuant to 37 C.F.R. § 2.127(a), and due to the simplicity of the issues in this proceeding, in lieu of filing a separate brief, Weatherbeeta's brief is embodied in this motion.

The grounds for this motion to dismiss are as follows:

1. EPC first used the COTTON NATURALS Mark at least as early as March 1992, as evidenced by EPC's October 30, 2001 registration on the Principal Register of the United States Patent and Trademark Office. EPC and EPC's successors in interest, including Weatherbeeta, have validly and continuously used the COTTON NATURALS Mark since at least as early as March 1992. Weatherbeeta is entitled to the presumptions that the registration of the COTTON NATURALS Mark is valid, that Weatherbeeta is the true owner of the COTTON NATURALS Mark, and that Weatherbeeta has exclusive, nationwide rights to use the COTTON NATURALS Mark. See 15 U.S.C. § 1115(a), 15 U.S.C. § 1057(b).

2. JPC's Petition to Cancel states that JPC has been using the COTTON NATURALS Mark since 1994. Assuming this allegation to be true, as required on a motion to dismiss, EPC's use of the COTTON NATURALS Mark predates JPC's use by at least two years. "Under familiar trademark principles, the right to exclusive use of a trademark derives from its appropriation and subsequent use in the marketplace. The user who first appropriates the mark obtains an enforceable right to exclude others from using it...." Buti v. Impresa Perosa, S.R.L., 935 F.Supp. 458, 468 (S.D.N.Y. 1996). Weatherbeeta, as successor in interest to EPC, is therefore the senior user of the COTTON NATURALS Mark, and JPC may not claim priority of use. See, Allard Enterprises, Inc. v. Advanced Programming Resources, Inc., 46 U.S.P.Q.2d 1865 (6th Cir. 1998) (trademark ownership rights flow only from prior appropriation and actual use in the market). See also, Hydro-Dynamics, Inc. v. George Putnam & Co., 1 U.S.P.Q.2d 1772 (Fed. Cir. 1987) (the requirements of both adoption and use of the mark devolve from the common law; trademark rights in the United States are acquired by such adoption and use).

3. A motion to dismiss based on the registrant's priority of use is appropriate where, on the face of the petitioner's pleadings, the petitioner cannot claim priority. Where, as here, the petitioning party alleges common law rights as of a date subsequent to the registrant's date of first use, such allegations are inadequate to support a petition to cancel on the ground that the petitioner is the rightful owner of the mark. Accordingly, JPC has failed to set forth a claim upon which it can prevail. See, Zirco Corp. v. American Tel. & Tel. Co., 21 U.S.P.Q.2d 1542, 1544 (T.T.A.B. 1991).

4. In addition, JPC has admitted that it does not own the COTTON NATURALS Mark inside the United States. Indeed, on its own Internet website JPC states that "COTTON NATURALS" is "a brand owned by JPC outside the USA." See Exhibit B.

5. Even if JPC claimed that its use of the COTTON NATURALS Mark outside the United States predates EPC's use of the COTTON NATURALS Mark in the United States (which it does not claim), "[p]riority of trademark rights in the United States depends solely upon priority of use in the United States, not on priority of use anywhere in the world. Prior use in a foreign nation does not establish priority of use in America." 4 McCarthy on Trademarks and Unfair Competition, § 29:2 (2002); Accord, Buti, supra., 935 F.Supp at 468 (quoting McCarthy, supra.); Person's v. Christman, 900 F.2d 1565, 1568 (Fed. Cir. 1990) ("foreign use has no effect on U.S. commerce and cannot form the basis for a holding that appellant has priority here. The concept of territoriality is basic to trademark law; trademark rights exist in each country solely according to that country's statutory scheme.")

6. JPC alleges in its petition that it is the rightful owner of the COTTON NATURALS Mark, and that EPC was simply JPC's distributor. As demonstrated above, JPC, by admission in its own pleadings, did not claim any use or ownership of the Mark in the United States until two years after EPC established use and ownership. Moreover, EPC was never JPC's distributor; rather, in or about 1991, JPC entered into a contractual agreement to manufacture goods for EPC. EPC used the COTTON NATURALS Mark on or in connection with those goods. In its capacity as manufacturer, JPC did not possess any trademark or other

rights in the COTTON NATURALS Mark in the United States. Moreover, JPC has had actual knowledge of EPC's and EPC's successors' continued use of the COTTON NATURALS Mark from 1992 to the present as a result of the ongoing business relationship that existed between JPC and EPC.

7. On the face of JPC's petition and EPC's federal registration, it is clear that EPC could not have used the COTTON NATURALS Mark merely in a capacity as JPC's distributor. Since EPC's registered date of first use is in 1992, and JPC's claimed date of first use is in 1994, EPC could not possibly have been acting as JPC's distributor with respect to the COTTON NATURALS Mark in 1992, prior to the date that JPC even alleges commencing use of the COTTON NATURALS Mark.

8. JPC has failed to allege facts sufficient to support a claim for cancellation of the COTTON NATURALS Mark.

WHEREFORE, Weatherbeeta hereby requests that this motion to dismiss be granted and the proceeding for cancellation of the COTTON NATURALS Mark be dismissed.

Respectfully submitted,

By: LOWENSTEIN SANDLER PC
65 Livingston Avenue
Roseland, New Jersey 07068
(973) 597-2500

ATTORNEYS FOR WEATHERBEETA PTY LTD.

By: 
David Leit, Esq.
Lisa C. Fodor, Esq.

Dated: March 14, 2003

CERTIFICATE OF EXPRESS MAILING

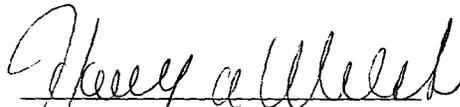
Cancellation No.: 41,357

In the matter of Trademark Registration No.: 2,501,184

For the Mark: COTTON NATURALS

Registered on: October 30, 2001

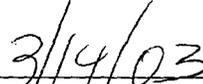
I, Holly A. Welsh, do hereby certify that the above-referenced correspondence, which is attached, is being deposited with the United States Postal Service as "Express Mail Post Office to Addressee" service under 37 CFR 1.10, postage prepaid, in an envelope addressed to the Assistant Commissioner for Trademarks, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on this 14th day of March, 2003.



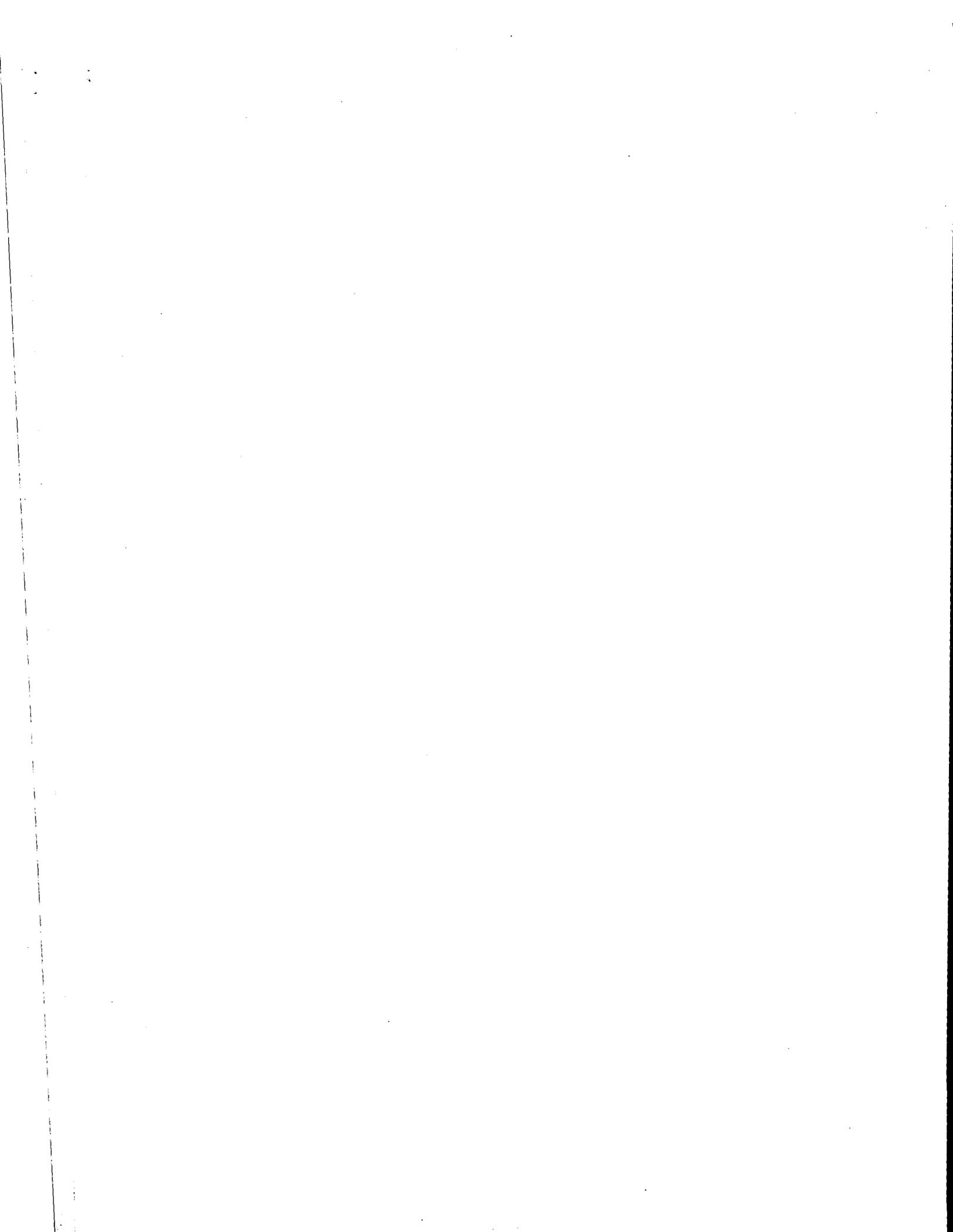
Holly A. Welsh

EJ096738360US

Express Mail Label Number



Date of Deposit



RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

The Bank of New York

- Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State
 Other New York Banking Corporation

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger
 Security Agreement Change of Name
 Other Private Sale of Collateral

Execution Date: 01/17/2003

2. Name and address of receiving party(ies)

Name: Weatherbeeta USA Inc.

Internal

Address: _____

Street Address: 25 Executive Avenue

City: Edison State: NJ Zip: 08817

- Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State New Jersey
 Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) _____

B. Trademark Registration No.(s) (2,299,472)
(2,501,184)

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: David Leit, Esq.

Internal Address: Lowenstein Sandler PC

Street Address: 65 Livingston Avenue

City: Roseland State: NJ Zip: 07068

6. Total number of applications and registrations involved: _____

2

7. Total fee (37 CFR 3.41).....\$ 65.00

- Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:

#501358

DO NOT USE THIS SPACE

9. Signature.

Lisa C. Fodor, Esq.

Name of Person Signing

Lisa C. Fodor

Signature

March 14, 2003

Date

9

Total number of pages including cover sheet, attachments, and document:

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

Tab settings ⇌ ⇌ ⇌ ▼ ▼ ▼ ▼ ▼ ▼ ▼

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Weatherbeeta USA, Inc.

- Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State
 Other _____

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: 01/17/2003

2. Name and address of receiving party(ies)

Name: Weatherbeeta Pty Ltd

Internal

Address: 8 Moncrief Rd., P.O. Box 368

Street Address: Nudawading, Victoria, Australia

City: _____ State: _____ Zip: 3131

- Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State _____
 Other Australian corporation

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) _____

B. Trademark Registration No.(s) (2,299,472)
(2,501,184)

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: David Leit, Esq.

Internal Address: Lowenstein Sandler PC

Street Address: 65 Livingston Avenue

City: Roseland State: NJ Zip: 07034

6. Total number of applications and registrations involved: _____

2

7. Total fee (37 CFR 3.41).....\$ 65.00

- Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:

#501358

DO NOT USE THIS SPACE

9. Signature.

Lisa C. Fodor, Esq.

Name of Person Signing

Lisa C. Fodor

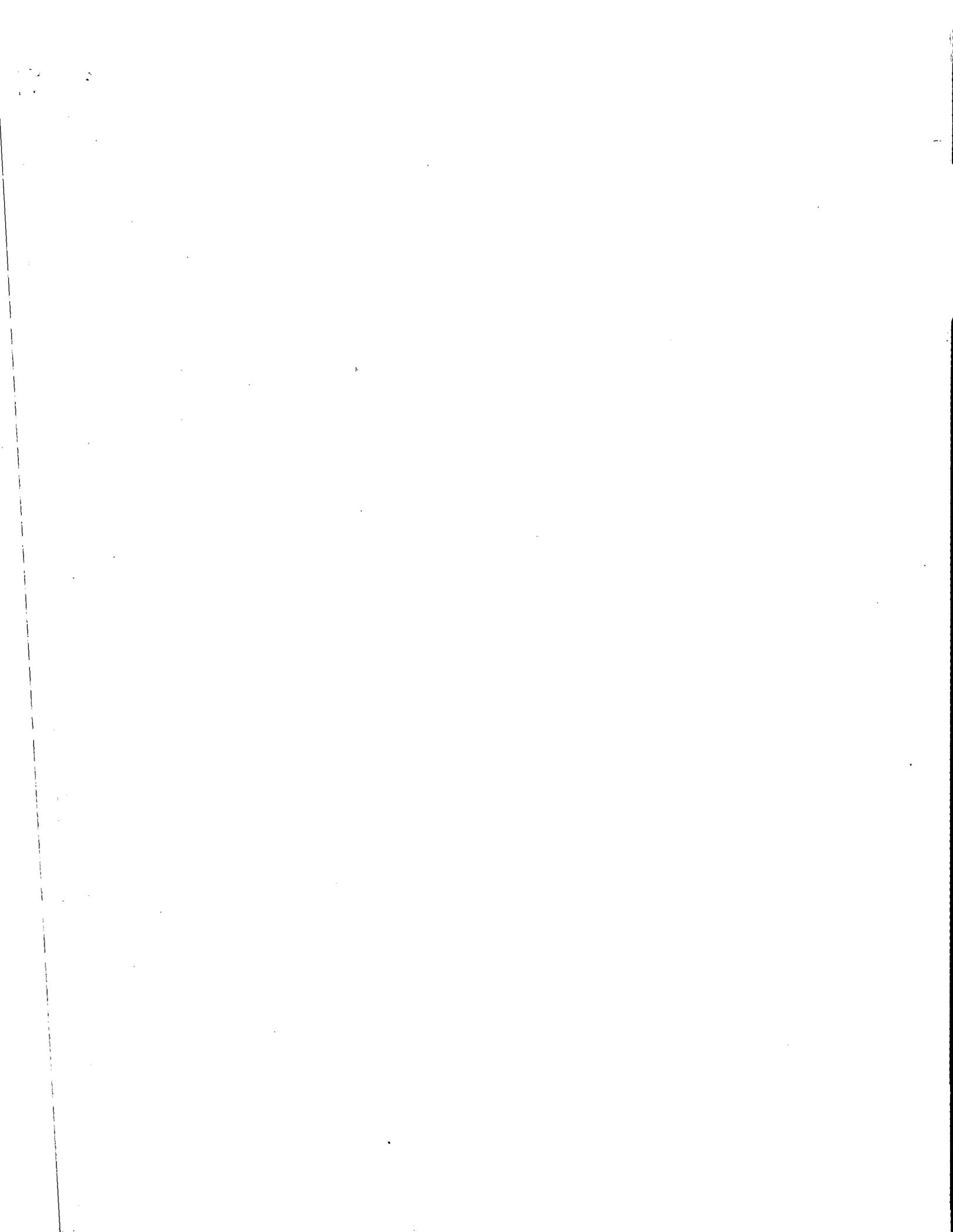
Signature

March 14, 2003

Date

4

Total number of pages including cover sheet, attachments, and document:





About JPC

In 1992 an enthusiastic horseman decided to do something about expensive synthetic equestrian clothing not just the pocket but the skin and environment as well. The time, he realised, was right for apparel which durable, affordable and stylish and made ecological sense.

This idea led to JPC — the one stop name for quality riding wear at affordable prices. **Today, JPC is the manufacturer of riding breeches and jodhpurs in the world.**

Led by **Sigma**, **Cotton Naturals™ ***, **TuffRider™**, **Jaipur Polo Company™**, **Platinum™** and a host of other well-known brands, JPC clothes are sold in the millions by an international network of retailers in over 50 countries.

Vertically integrated, JPC offers quality products, on-time delivery and innovative fabrics. Our complete, in-house manufacturing facility includes yarn preparation, knitting, weaving, dyeing, elasticated waistband production, computerized embroidery, garment making and packaging, giving us the flexibility to offer customized styles for every market.

At JPC, we create clothes that combine fun, fashion and function at great value for the rider.

Quality Policy

To be a customer-driven organization, through technical innovation, quality conscious staff with an objective of zero defect production. We commit ourselves at all levels of the organization to a quality system that ensures continuous improvement.

* A brand owned by JPC outside the USA



The world's largest manufacturer of breeches and jodhpurs



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Our Brands



The Cotton Naturals range offers unmatched versatility in usage. Whether routine schooling, casual riding or an important event, Cotton Naturals is always the right choice.

The key to Cotton Naturals all purpose utility are fabrics that offer the following advantages:

- Robustness with power and recovery for soft stretch
- Breathability that makes for pleasant wearing
- Exceptional softness with natural aesthetics
- Shape retention for comfort without bagging.

Cotton Naturals™ is a brand owned by JPC outside the USA.

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CERTIFICATE OF SERVICE

Cancellation No.: 41,357

In the matter of Trademark Registration No.: 2,501,184

For the Mark: COTTON NATURALS

Registered on: October 30, 2001

The undersigned hereby certifies that a copy of the foregoing Motion to Dismiss was served upon the attorneys of record for Petitioner JPC, by depositing a copy of same with the United States Postal Service as "Express Mail Post Office to Addressee," postage prepaid, in an envelope addressed to: Alfred C. Frawley of PRETI, FLAHERTY, BELIVEAU, PACHIOS & HALEY, LLC, One City Center, P.O. Box 9546, Portland, Maine 04112-9546, on this 14th day of March, 2003.

Lisa C. Fodor

Lisa C. Fodor, Esq.

3|14|03

Date