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06-24-2002

U.S. Patent & TMOft/TM Mail Ropt Dt. #22

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

DADA CORPORATION,)	
)	
Petitioner,)	
)	
v.)	Cancellation No.
)	
KYARRA INSPIRES, INC.)	
)	
Respondent.)	

TRADEMARK TRIAL AND
APPEAL BOARD
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PETITION FOR CANCELLATION

In the matter of trademark Registration No. 2,074,086, issued June 24, 1997, in the name of Kyarra Inspires, Inc., for the mark DAMANI DADA, the Petitioner, Dada Corporation, believes it will be damaged by the continued registration of said alleged trademark and hereby petitions to cancel same. The grounds for cancellation are as follows:

1. The Petitioner, Dada Corporation (hereinafter "Dada"), is a corporation duly organized and existing under the laws of the Republic of Korea and having its place of business at DADA CENTER, 790-4 Yeoksam-Dong, Kangnam-Ku, Seoul, KOREA. Petitioner markets, distributes and sells clothing including, without limitation hats and caps, in commerce with the United States.

2. Commencing prior to the date of first use alleged in the registration sought to be cancelled herein, Petitioner has, and is now, engaged in the marketing, distribution and sale of clothing, in commerce with United States, bearing the trademark **DADA per se, DADA & Design** and/or referencing or in connection with the trade name Dada Corporation (hereinafter collectively "Petitioner's **DADA** mark and name"). Petitioner Dada continuously has used said Petitioner's

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DADA mark and name, in commerce in connection with clothing, marketed, advertised, offered for sale, and sold by Dada, and to identify and designate same, and to distinguish those goods and Petitioner's business from those of others.

3. On May 30, 1995, the United States Patent and Trademark Office issued to Petitioner Registration No. 1,896,120 for the **DADA** mark in connection with "clothing, namely belts, night caps, hats, socks, athletic uniforms, night gowns, pajamas, night clothes, swimming hats, swimming suits, sport shirts, sweaters, jumpers, rain coats, coats, jackets, men's suits; children's clothing, namely infantwear; work clothing, namely pants, shirts, boots, coats, jackets, overalls, and gloves; and student clothing, namely jeans, pants, shorts, skirts, T-shirts, caps, belts, socks, sweats and jackets; and pocket squares." Petitioner Dada has used and is using the **DADA** mark in commerce in connection with "night caps, hats, swimming hats, caps, shirts and T-shirts" marketed, advertised, offered for sale, and sold by or for Dada, and to identify and designate same, and to distinguish such goods from those of others.

4. Petitioner Dada is the owner of, and will rely herein upon, Registration No. 1,896,120. Said registration is valid and subsisting, and constitutes conclusive evidence of Petitioner Dada's ownership of Petitioner's **DADA** mark, and exclusive right to use same in commerce in connection with the goods set forth in said registration, namely, "night caps, hats, swimming hats, caps, shirts and T-shirts."

5. Since Petitioner's initial use of Petitioner's **DADA** mark and name, Dada has used, and advertised, marketed and offered its goods under and in connection with said mark to the public, through various channels of trade, and in commerce, with the result that Petitioner's customers and the public in general have come to know and recognize said mark and name of

Petitioner and associate same with Petitioner and/or the goods marketed, advertised, marketed, distributed, and sold directly or indirectly by Petitioner Dada.

6. On September 6, 1996, Respondent filed an application to register the DAMANI DADA mark, based on actual use of said mark. On June 24, 1997, Registration No. 2,074,086 issued on said application, identifying the goods as "clothing, namely, hats, tops, bottoms, underwear, socks, and shoes".

7. On February 10, 2000, Respondent Kyarra Inspires, Inc. (hereinafter "Respondent" or "Kyarra") filed a Petition to cancel Petitioner's Registration No. 1,896,120. Kyarra alleged that it owned Applications for Serial Nos. 75/606,168; 75/079,249 and; 75/606/169 for DADA-formative marks which had been refused under Section 2(d) of the Lanham Act based on confusing similarity with Dada's registration.

8. The DAMANI DADA mark which is the subject of Kyarra's registration is a colorable imitation of, and is confusingly similar to, Petitioner's prior and aforesaid **DADA** mark and name.

9. Upon information and belief, the goods set forth in the registration sought to be cancelled herein are identical and/or related to the goods with which Dada uses Petitioner's **DADA** mark and name, and are and/or will be sold through the same and/or similar channels of trade, and/or to the same general class of purchasers, in and to which Dada's products are marketed and/or sold.

10. The DAMANI DADA mark, as set forth in the registration sought to be cancelled, is likely to cause confusion, mistake, and/or to deceive as to the origin, sponsorship, and/or association of Respondent's goods sold and/or to mislead purchasers of Respondent's and/or

Petitioner's goods, and/or the public in general, into believing that Respondent's goods are sold by, emanate from, and/or in some way, directly or indirectly, are associated with Dada, and/or Petitioner's **DADA** mark and name, or products or business, or vice versa, to the damage and detriment of Dada.

11. By virtue of the foregoing, Dada believes it will be damaged by the continued registration by Respondent of the DAMANIDADA mark, as set forth in U.S. trademark Registration No.2,074,086.

12. If Respondent continues to enjoy the rights as conferred under the Principal Register of the Trademark Act of 1946, Respondent will obtain unlawful gain and advantage to which it is not entitled under the Trademark Act of 1946, to the detriment and harm of Petitioner.

WHEREFORE, this Petitioner, Dada Corporation, believes and alleges that it will be damaged by U.S. trademark Registration No. 2,074,086 of the DAMANIDADA mark, as aforesaid, and prays that:

- A. judgment in the present cancellation action be entered in favor of Petitioner;
- B. the present cancellation action be sustained; and
- C. trademark Registration No. 2,074,086 be cancelled.

Respectfully submitted,

DADA CORPORATION



Date: June 24, 2002

By:

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06-24-2002

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June 24, 2002

Assistant Commissioner for Patent and Trademarks
U.S. Patent and Trademark Office
2900 Crystal Drive
Arlington, VA 22202

Re: Registration No. 2,074,086
Mark: DAMANI DADA
Kyarra Inspires, Inc.
Our Reference: I-4677

Sir:

We enclose the following for filing in the Patent and Trademark Office:

X Petition for Cancellation (in Duplicate)

Also enclosed is our check for the required filing fee in the amount of \$300.00.
Should this check become detached, or the amount be insufficient, please charge our Deposit
Account No. 06-1358.

Respectfully submitted,

JACOBSON HOLMAN PLLC

by
Simor L. Moskowitz / Matthew Cuccias

Simor L. Moskowitz

SLM/MJC/ssh

Enclosures

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