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

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AMERICAN MARKETING ENTERPRISES, INC., :

Petitioner :

VS. :

SULLCRAFT INDUSTRIES, CORP., :

Respondent. :

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02-24-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #30

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Attn: Box TTAB, Arlington, VA 22202-3513, on

February 20, 2003

(Date of Deposit)

Lande J. Lieberman

Name of applicant, assignee or Representative

Signature

February 20, 2003

Date of Signature

PETITION TO CANCEL A REGISTRATION IN THE  
UNITED STATES PATENT AND TRADEMARK OFFICE

Asst. Commissioner for Trademarks  
2900 Crystal Drive  
Attn: Box TTAB  
Arlington, VA 22202-3513

TRADEMARK TRIAL AND  
APPEAL BOARD  
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SIR:

AMERICAN MARKETING ENTERPRISES, INC., a corporation organized and existing under the laws of the State of New York, and located and doing business at 10 West 33rd Street, New York, New York 10001 (hereinafter referred to as "Petitioner"), believes that it will be damaged by the continued registration of the trademark "NITE TIME" shown in U.S. Registration No. 811,749 and registered in respect of "men's, boys', women's and girls' pajamas", owned of record by Sullcraft Industries, Corp., a corporation of Pennsylvania having a last known address (as

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listed in the current records of the U.S. Patent and Trademark Office) of 30 West Scott Avenue, Rahway, New Jersey 07065, and accordingly petitions to cancel the same.

As grounds for cancellation, it is respectfully shown and alleged that:

1. On information and belief, Respondent is the owner of U.S. Registration No. 811,749, issued July 26, 1966 and last renewed on July 26, 1986, for the mark "NITE TIME" in respect of "men's, boys', women's and girls' pajamas".

2. On information and belief, Respondent has long since abandoned and ceased all use of the said trademark "NITE TIME" without intent to resume use thereof.

3. Petitioner has a *bona fide* intention to use the trademark "NITETIME" in interstate commerce in connection with clothing for children, namely, pants, shirts, slacks, t-shirts, socks, shorts, dresses, skirts, jeans, jumpers, jumpsuits, jackets, coats, sport jackets, neckties, sweatsuits, sweatshirts, sweatpants, anklets, bathing suits, bathing trunks, bathrobes, beach cover-ups, belts, hats, cloth bibs, shoes, sneakers, boots, sandals, slippers, pajamas, nightshirts, nightgowns, underpants, undershirts, sweaters, masquerade costumes and masks, overalls, coveralls, gloves, evening gowns, nightgowns, gym shorts, gym suits, halter tops, head bands, jogging suits, leggings, overcoats, petticoats, playsuits, pullovers, rainwear, suits, sweat bands, athletic uniforms, unitards, and vests.

4. On February 19, 2003, Petitioner filed in the U.S. Patent and Trademark Office a formal application to register the mark "NITETIME", based upon Petitioner's *bona fide* intention to use that mark in commerce in connection with "clothing for children, namely, pants, shirts, slacks, t-shirts, socks, shorts, dresses, skirts, jeans, jumpers, jumpsuits, jackets, coats, sport jackets, neckties, sweatsuits, sweatshirts, sweatpants, anklets, bathing suits, bathing trunks, bathrobes, beach cover-ups, belts, hats, cloth bibs, shoes, sneakers, boots, sandals, slippers, pajamas, nightshirts, nightgowns, underpants, undershirts, sweaters, masquerade costumes and masks, overalls, coveralls, gloves, evening gowns, nightgowns, gym shorts, gym suits, halter tops,

head bands, jogging suits, leggings, overcoats, petticoats, playsuits, pullovers, rainwear, suits, sweat bands, athletic uniforms, unitards, and vests". Petitioner's said application has been assigned Serial No. 78/216,525, but on information and belief has not yet been examined by the U.S. Patent and Trademark Office.

5. Petitioner believes and fully expects that, upon examination of its aforesaid application to register the trademark "NITETIME" in connection with "clothing for children, namely, pants, shirts, slacks, t-shirts, socks, shorts, dresses, skirts, jeans, jumpers, jumpsuits, jackets, coats, sport jackets, neckties, sweatsuits, sweatshirts, sweatpants, anklets, bathing suits, bathing trunks, bathrobes, beach cover-ups, belts, hats, cloth bibs, shoes, sneakers, boots, sandals, slippers, pajamas, nightshirts, nightgowns, underpants, undershirts, sweaters, masquerade costumes and masks, overalls, coveralls, gloves, evening gowns, nightgowns, gym shorts, gym suits, halter tops, head bands, jogging suits, leggings, overcoats, petticoats, playsuits, pullovers, rainwear, suits, sweat bands, athletic uniforms, unitards, and vests", the Patent and Trademark Office will refuse registration of the mark on the ground that, as applied to Petitioner's goods, its mark "NITETIME" so resembles the Respondent's mark "NITE TIME" (the subject of U.S. Registration No. 811,749) that the public is likely to be confused, mistaken or deceived. Because Applicant's and Petitioner's wordmarks are almost identical, and are or were used or intended for use in connection with the same types of goods -- i.e. articles of clothing -- Petitioner expects and believes that it will be unable to attain registration of its mark "NITETIME" so long as Respondent's mark "NITE TIME" remains on the Principal Register.

6. Petitioner thus believes that it is likely to be damaged by continuance of said U.S. Registration No. 811,749.

WHEREFORE, it is respectfully prayed that this Petition be granted and that U.S. Registration No. 811,749 be cancelled.

The statutory fee of \$300.00 for this Petition for Cancellation, and a duplicate copy of this Petition for Cancellation, are enclosed. Any additional fees or charges required at this time in connection with this Petition for Cancellation may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Petitioner, AMERICAN MARKETING ENTERPRISES, INC., hereby appoints COHEN, PONTANI, LIEBERMAN & PAVANE; MYRON COHEN, Reg. No. 17,358; THOMAS C. PONTANI, Reg. No. 29,763; LANCE J. LIEBERMAN, Reg. No. 28,437; MARTIN B. PAVANE, Reg. No. 28,337; THOMAS LANGER; Reg. No. 27,264; MICHAEL C. STUART, Reg. No. 35,698; JULIA S. KIM, Reg. No. 36,567; EDWARD M. WEISZ, Reg. No. 37,257; WILLIAM A. ALPER; VINCENT M. FAZZARI, Reg. No. 26,879; ALFRED W. FROEBRICH, Reg. No. 38,887; ALFRED H. HEMINGWAY, JR., Reg. No. 26,736; KENT H. CHENG, Reg. No. 33,849; YUNLING REN, Reg. No. 47,019; ROGER S. THOMPSON, Reg. No. 29,594; JEREMY A. KAUFMAN; F. BRICE FALLER, Reg. No. 29,532; and TEODOR J. HOLMBERG, Reg. No. 50,140; all attorneys-at-law duly admitted to practice under the laws of the State of New York, and all with offices at 551 Fifth Avenue, Suite 1210, New York, New York 10176, as its attorneys, with full power of substitution and revocation, to prosecute this Cancellation and to transact all business in the Patent and Trademark Office in connection therewith.

Kindly direct all telephone calls in respect of this Petition for Cancellation to Lance Lieberman at telephone No. 212-687-2770.

All correspondence in connection with this Petition for Cancellation should be addressed to:

Lance J. Lieberman  
Cohen, Pontani, Lieberman & Pavane  
551 Fifth Avenue - Suite 1210  
New York, New York 10176

LANCE J. LIEBERMAN declares that he is an attorney for Petitioner AMERICAN MARKETING ENTERPRISES, INC. and is authorized to execute this Petition and Declaration on its behalf; that he has read the foregoing Petition for Cancellation and knows the contents thereof; that the facts and allegations set forth therein are, to the best of his knowledge, true and correct except as to matters stated therein to be upon information and belief and that as to those matters he believes them to be true; and further that these statements 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 the Cancellation.

AMERICAN MARKETING ENTERPRISES, INC.

Dated: February 20, 2003

By

  
Lance J. Lieberman  
Attorney for Petitioner

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