

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

In the Matter of Registration No. 2598857
Registered: July 23, 2002

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Soxland International, Inc.

Petitioner

v.

Pat McManus, d/b/a K. Marie Enterprises

Registrant
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Cancellation No.:
Mark: NU (stylized)
Reg. No.: 2598857
Filed: April 27, 2000
Issued: July 23, 2002



04-12-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #74

PETITION FOR CANCELLATION
PURSUANT TO 15 U.S.C. SECTION 1064(a)

In the matter of trademark Reg. No. 2598857 for NU (stylized) for sheer pantyhose, tights and sox ("Registrant's Goods") in Int. Class 025, issued to Pat McManus, DBA K. Marie Enterprises ("Registrant") on July 23, 2002, Soxland International, Inc., ("Petitioner") a corporation organized and existing under the laws of New York, located and doing business at 301 Summit Avenue, Jersey City, New Jersey 07306, believes that it will be damaged by the continued registration of NU (stylized) as Registrant's mark and hereby petitions to cancel said registration pursuant to 15 U.S.C. §1064 (Trademark Act of 1946, §14).

As grounds of cancellation, it is alleged that:

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THE PARTIES, THEIR MARKS AND GOODS

1. Petitioner is the owner of the mark NU & NU, and variations thereof ("Petitioner's Mark") as a trademark, trade name, and as a service mark as applied to a wide range of goods and services directed to wholesale and retail consumers.

2. Petitioner is now and for many years has been trading as and known by the Petitioner's Mark, identifying Petitioner as the source of a wide variety of goods, namely, clothing, namely hosiery, socks, panty hose and tights the same being substantially identical to and generally related to Registrant's Goods.

3. U.S. Registration No. 2598857 issued July 23, 2002 to Pat McManus, DBA K. Marie Enterprises.

4. Upon information and belief, Registrant is a individual having a business address at 759 Banting Court, Milton, Ontario, Canada L9T 3M4 .

5. The Registration covers the trademark NU (stylized), for sheer pantyhose, tights and socks in International Class 025.

6. Application Serial No. 78/244,632 filed on May 1, 2003 on behalf of Petitioner to register NU & NU was rejected by the P.T.O. on the grounds that the mark of Applicant (Petitioner herein), so resembles NU (stylized) for Registrant's Goods, as shown in U.S. Reg. No. 2598857 as to be likely to cause confusion, or to cause mistake, or to deceive [Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052 (d)].

AS AND FOR A FIRST GROUNDS FOR CANCELLATION

7. Upon information and belief, the Registrant has abandoned the mark covered by the Registration. The Cancellation is, therefore, appropriate under Section 14(3) of the Lanham Act, 15 U.S.C. Section 1064(3).

8. Upon information and belief, Registrant has discontinued use of the mark covered by the Registration. Upon further information and belief, Registrant intends not to resume of such mark.

9. Upon information and belief, the Registrant has not used the mark covered by the Registration for at least three (3) years.

10. Registrant's failure to make use of its alleged mark in the United States for a period of three (3) years is prima facie evidence of abandonment.

11. Registrant has abandoned the mark NU (stylized) in the United States and its U.S. Reg. No. 2598857 therefor.

AS AND FOR A SECOND GROUNDS FOR CANCELLATION

12. Petitioner is now and has been, for many years prior to any date which may be claimed by Registrant, engaged in the use Petitioner's Mark for clothing, namely hosiery, socks, panty hose and tights. Since long prior to any date which may be claimed by Registrant, Petitioner on its own behalf has been, and is now engaged in the sale of the goods identified in paragraph 3 hereinabove under the Petitioner's Mark in interstate commerce. The use by Petitioner of the Petitioner's Mark for the Petitioner's goods and services alleged herein, is long prior to any date which may be lawfully claimed by Registrant, and Petitioner has priority.

13. Upon information and belief, Registrant distributes and sells its goods through the same channels of trade as Petitioner, and directs its respective goods to the same ultimate consumer as Petitioner.

14. The Petitioner's Mark and Registrant's NU & NU mark are confusingly similar when applied to the goods of the parties.

15. The goods of Registrant and Petitioner are substantially related in part and generally related in part, and Registrant's intended use of NU & NU in connection with its goods is without the consent or permission of Petitioner.

16. Since Petitioner owns the Petitioner's Mark by virtue of prior use, mistake or deception as to the source of origin of the goods will arise and will injure and damage the Petitioner and its goodwill.

DAMAGE TO PETITIONER

17. The registration of the mark NU & NU to Registrant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Registrant's goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related to or associated with Petitioner, all to Petitioner's irreparable damage.

18. The continued existence of Reg. No. 2598857 creates a serious cloud on Petitioner's continued right to use NU & NU, alone or in combination, for the goods set forth in its application.

19. Petitioner believes that it is and will be damaged by the continued registration of the mark to Registrant.

20. Upon information and belief, the domestic representative to be served is:

Pat McManus, DBA K. Marie Enterprises
759 Banting Court
Milton, Ontario, Canada L9T 3M4

21. A credit card authorization in the amount of \$300.00 for the fee to file this Petition for Cancellation is attached hereto.

WHEREFORE, Petitioner prays that Reg. No. 2598857 for the mark NU (stylized) be canceled.

Please recognize as attorneys for Petitioner in this proceeding BAKER and RANNELLS PA, maintaining offices at 626 North Thompson Street, Raritan, New Jersey 08869 and New York, New York. All correspondence is to be directed to:

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BAKER and RANNELLS PA

Dated: *April 8, 2004*

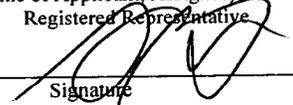


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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202.

April 8, 2004

Date of Deposit
Stephen L. Baker, Esq

Name of Applicant, Assignee, or
Registered Representative


Signature
April 8, 2004

Date of Signature