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

Proceeding	92044571
Party	Defendant DELAN ENTERPRISES INCORPORATED DELAN ENTERPRISES INCORPORATED 8 EVEREST DRIVE HACKETTSTOWN, NJ 07840
Correspondence Address	BRET J. DANOW, ESQ. KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585
Submission	Motion for Summary Judgment
Filer's Name	Bret J. Danow
Filer's e-mail	bret.danow@kattenlaw.com
Signature	/s/
Date	01/23/2006
Attachments	DOC002.TIF (16 pages)

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

200 Kelsey Associates, LLC,	)	
Petitioner,	)	Cancellation No. 92044571
v.	)	**Mark: JONATHAN LOGAN**
Delan Enterprises Incorporated,	)	Reg. Nos.: 549,924 and 937,651
Respondent.	)	

REGISTRANT'S MOTION FOR SUMMARY JUDGMENT; AND BRIEF

Respondent/Registrant Delan Enterprises Incorporated hereby moves for a summary judgment of dismissal of this cancellation proceeding, on the ground that it is using the challenged mark in commerce. This motion is being filed prior to the April 14, 2006 commencement of the reset testimony period for petitioner.

BRIEF IN SUPPORT OF MOTION

I. Undisputed Facts

The following facts are undisputed:

1. Petitioner 200 Kelsey Associates, LLC commenced this proceeding by a Petition for Cancellation (the "Petition for Cancellation") mailed on May 27, 2005, which alleges: "Upon information and belief, Registrant has abandoned the trademark JONATHAN LOGAN and has no intent to re-establish such use."

2. The original applications for the JONATHAN LOGAN marks at issue were use-based applications filed by Registrant's predecessor-in-interest on May 27, 1950 and May 28, 1971 as Application Nos. 71/598,262 covering "women's dresses" (the "'262 Application") and

72/393,465 covering "women's dresses, pant suits, pants, shorts, culottes, blouses, jackets, vests and coats" (the "'465 Application"), respectively.

3. On October 23, 1951, the '262 Application matured into U.S. Trademark Registration No. 549,924 (the "'924 Registration"). The '924 Registration was renewed on October 23, 1971, December 23, 1991 and December 13, 2001, each time through the submission and acceptance by the U.S. Patent and Trademark Office of a Declaration pursuant to Section 8 of the Lanham Act, indicating that the registered mark had been continuously in use from at least April, 1941 to the date of the declaration.

4. On July 11, 1972, the '465 Application matured into U.S. Trademark Registration No. 937,651 (the "'651 Registration"). The '651 Registration was renewed on July 7, 1992 and December 13, 2001, each time through the submission and acceptance by the U.S. Patent and Trademark Office of a Declaration pursuant to Section 8 of the Lanham Act, indicating that the registered mark had been continuously in use from at least April, 1944 to the date of the declaration. On August 29, 1977, the '651 Registration became entitled to incontestable status pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065.

5. Delan Enterprises Incorporated and its predecessor-in-interest have been using the JONATHAN LOGAN mark continuously on and in connection women's dresses, pant suits, pants, shorts, culottes, blouses, jackets, vests and coats in the stylized registered form. Examples of such usage are attached to the Declaration of Rudy DelVecchio, submitted herewith. Such usage has continued to the present. A copy of a receipt showing the purchase on September 20, 2005 of JONATHAN LOGAN brand pants from the Annie Sez store in Massapequa, New York is attached to the Declaration of Melissa Higgins, submitted herewith.

II. The Registrant's Continued Use of the Mark Entitles Registrant to Summary Judgment.

A. The Legal Standard

A party moving for summary judgment is entitled to such a judgment if the evidence relevant to the motion shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Where appropriate, summary judgment is "a salutary method of disposition," which promotes judicial economy by avoiding an unnecessary trial. *See, e.g., Levi Strauss & Co. v. Genesco, Inc.*, 742 F.2d 1401, 222 USPQ 939 (Fed. Cir. 2004); *Pure Gold, Inc. v. Syntex (U.S.A.), Inc.*, 739 F.2d 624, 222 USPQ 741, 743 (Fed. Cir. 1984).

While the moving party has the burden of demonstrating the absence of any genuine issue of material fact and that it is entitled to judgment as a matter of law, such burden need not always be supported by evidence, but can be met by pointing out "that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The non-moving party may not rest on mere denials or conclusory assertions, but rather must proffer countering evidence showing that there is a genuine factual dispute for trial. Fed. R. Civ. P. 56(e); *Ocotocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990).

The evidentiary record in an inter partes proceeding before the Board includes, without action by any party, the file of any registration which is the subject of the proceeding. 37 CFR § 2.122(b).

B. Argument

Petitioner's Petition for Cancellation reveals that this cancellation proceeding was begun on the mistaken assumption that the Registrant was not using its mark. Petitioner alleges that it

conducted an investigation into Registrant's use of the JONATHAN LOGAN marks but provides no evidence whatsoever as to the content of such investigation. Petitioner did not consult the file of these Registrations, nor contact the Registrant, each of which would have revealed that the JONATHAN LOGAN mark was and continues to be in use.

Registrant has made continuous use of the JONATHAN LOGAN mark in commerce, including in the registered stylized form. *See* DelVecchio Declaration, ¶3. Products bearing the JONATHAN LOGAN mark are available for sale at, among many others, the following retailers: Annie Sez, JC Penney, Burlington Coat Factory, Value City, Steinmart, Syms, Bolton's, Strawberry and Ashley Stewart. *See* DelVecchio Declaration, ¶4. On September 20, 2005, two pairs of JONATHAN LOGAN brand pants were purchased at the Annie Sez store in Massapequa, New York. *See* Lerner Declaration, ¶2. Accordingly, there is simply no basis for this cancellation proceeding and Registrant is entitled to its dismissal.

III. Conclusion

Accordingly, for the foregoing reasons, Respondent/Registrant respectfully requests that the Petition for Cancellation be dismissed.

Dated: January 23, 2006

Respectfully submitted,

By: _____

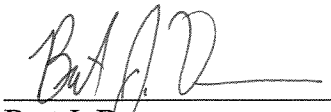
Bret J. Danow
Katten Muchin Rosenman LLP
Attorneys for Respondent
575 Madison Avenue
New York, New York 10022-2585
(212) 940-6365

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the Registrant's Motion for Summary Judgment and Brief in Cancellation No. 92044571 to be served upon:

Jed Ferdinand, Esq.
Grimes & Battersby, LLP
488 Main Avenue, Suite 300
Norwalk, Connecticut 06851

by placing same in an envelope, properly sealed and addressed, with postage prepaid and depositing same with the United States Postal Service on this 23rd day of January, 2006.



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200 Kelsey Associates, LLC,	)	
Petitioner,	)	Cancellation No. 92044571
v.	)	**Mark: JONATHAN LOGAN**
Delan Enterprises Incorporated,	)	Reg. Nos.: 549,924 and 937,651
Respondent.	)	

DECLARATION OF MELISSA HIGGINS

MELISSA HIGGINS states as follows:

1. I am employed as a paralegal at the law firm of Katten Muchin Rosenman LLP.

2. On September 20, 2005, I purchased two pairs of JONATHAN LOGAN brand pants at the Annie Sez store in Massapequa, New York. A copy of the receipt of purchase is attached hereto.

I declare under penalty of perjury that the foregoing is true and correct and that I have personal knowledge of the matters set forth above.

Executed on January 23, 2006

Melissa Higgins
MELISSA HIGGINS

ANNIE SEZ
Massapequa, NY (516) 799-9055

PANT SOFT F OTHER	10583463	24.99 12
PANT SOFT F OTHER	10583470	24.99 12

SUBTOTAL	$49.98
(1)State 4.000%	$2.00
(2)Local 4.625%	$2.32
TOTAL	$54.30
MASTERCARD	$54.30

**********4644
PURCHASE
EXPIRY: 03/08 SWIPED
AUTH# (MANUAL) R29623

REGULAR PRICED MERCHANDISE RETURNS
We will exchange, refund or credit your charge account for regular price purchases within 30 days with a sales receipt and all tickets attached. The refund will be in the form of the original payment. *

After 30 days, or without a sales receipt and all tickets attached, a store credit will be issued for the current selling price.

SALE/CLEARANCE MERCHANDISE RETURNS
We will exchange, refund or credit your charge account for all sale / clearance priced purchases within 14 days with a sales receipt and all tickets attached. The refund will be in the form of the original payment. *
After 14 days, or without a sales receipt and all tickets attached, a store credit will be issued for the current selling price.

* All sales on Prada, Fendi and Marc Jacobs products, on 70% off merchandise and on selected clearance merchandise are final sale and may not be exchanged or returned.

Refunds on check purchases require a seven day waiting period.

WORK WHERE YOU LOVE TO SHOP!!!
Flexible Hours
30% Merchandise Discount
Excellent Hourly Rate
See Store Manager For Details

For other locations, visit us at WWW.ANNIESEZ.COM

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ITEMS 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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200 Kelsey Associates, LLC, Petitioner, v. Delan Enterprises Incorporated, Respondent.	Cancellation No. 92044571 **Mark: JONATHAN LOGAN** Reg. Nos.: 549,924 and 937,651

DECLARATION OF RUDY DELVECCHIO

RUDY DELVECCHIO states as follows:

1. I am the President of Delan Enterprises Incorporated and have been employed by Delan Enterprises Incorporated since 1999.

2. In my capacity as President, I am familiar with the use that Delan Enterprises Incorporated has made of the JONATHAN LOGAN mark since my employment. I am also familiar with the prior circumstances relating to the mark JONATHAN LOGAN through my review of the records of Delan Enterprises Incorporated, through my interactions with customers and other personnel of Delan Enterprises Incorporated and because acquiring such familiarity is relevant to my ongoing job responsibilities.

3. Delan Enterprises Incorporated and its predecessors-in-interest have used the JONATHAN LOGAN mark continuously on and in connection with women's dresses, pant suits, pants, shorts, culottes, blouses, jackets, vests and coats, in the stylized registered form. Such usage has continued to the present.

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4. Products bearing the JONATHAN LOGAN mark are available for sale at, among many others, the following retailers: Annie Sez, JC Penney, Burlington Coat Factory, Value City, Steinmart, Syms, Bolton's, Strawberry, and Ashley Stewart.

5. Examples of usage of the JONATHAN LOGAN mark are attached hereto.

I declare under penalty of perjury that the foregoing is true and correct and that I have personal knowledge of the matters set forth above.

Executed on January 10, 2006

RUDY DELVECCHIO

Jonathan Logan
8
MADE IN CHINA
SHELL: 80% POLYESTER
20% RAYON
LINING:
100% POLYESTER
DRY CLEAN ONLY

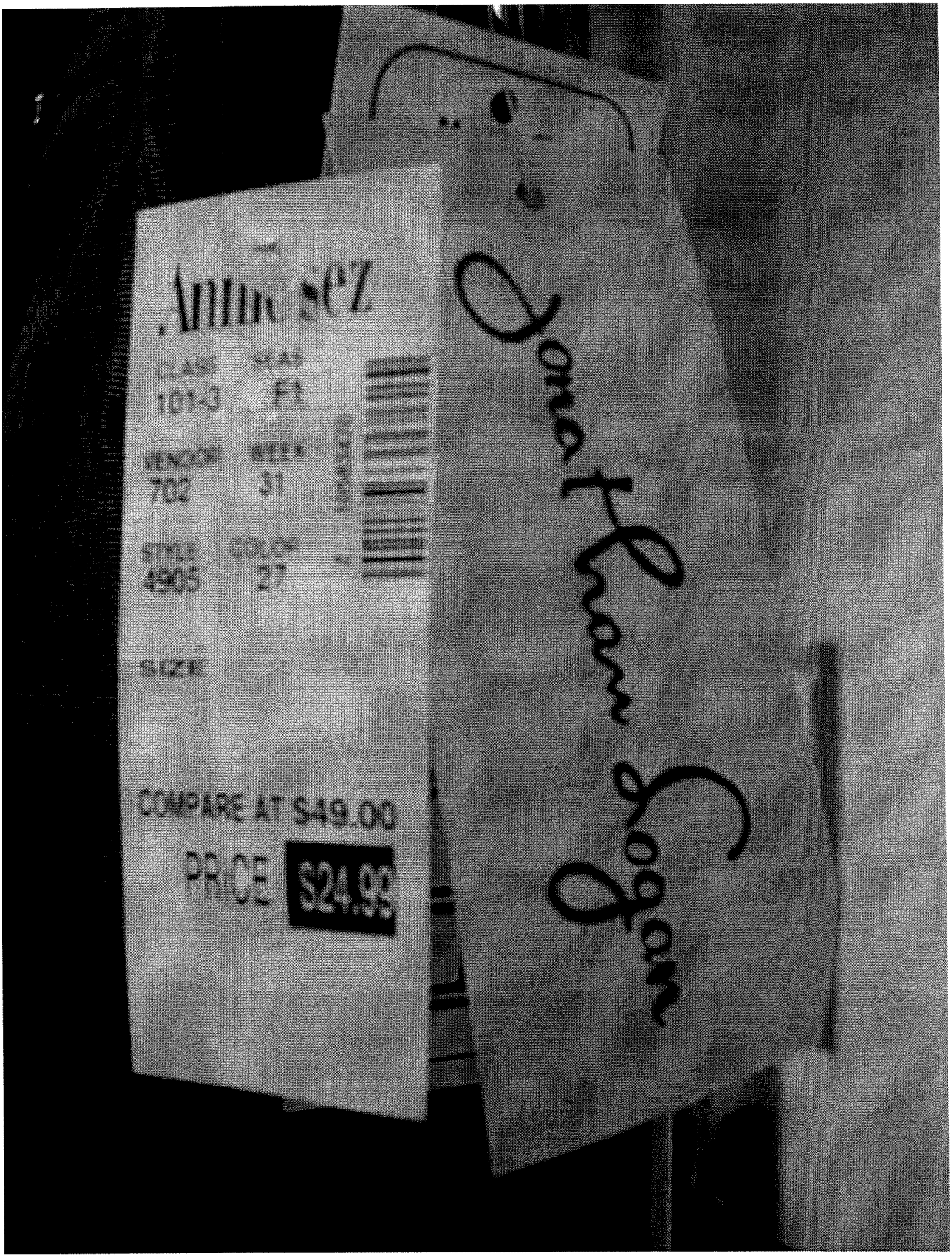
Jonathan Logan

Jonathan Logan

Jonathan Logan
8
97%
3%
SPANDEX
RN 97831
MADE IN CHIN

Jonathan Logan

6
97% POLYES
3% SPANDEX
RN 97831
MADE IN CHIN


Anne Klein
CLASS 101-3
SEAS F1
VENDOR 702
WEEK 31
STYLE 4905
COLOR 27
SIZE
COMPARE AT $49.00
PRICE $24.99