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Filing date: **02/28/2007**

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

Proceeding	92046087
Party	Plaintiff Ditto Apparel of California, Inc. Ditto Apparel of California, Inc. Ditto Apparel of California, Inc. Highway 8 East Colfax, LA 71417 UNITED STATES
Correspondence Address	Marc P. Misthal Gottlieb, Rackman & Reisman, P.C. 270 Madison Avenue New York, NY 10016 UNITED STATES mmisthal@grr.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Marc P. Misthal
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Signature	/Marc P. Misthal/
Date	02/28/2007
Attachments	Consented Motion to Amend Petition for Cancellation and Amended Petition.pdf (6 pages)(393114 bytes)

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

In the Matter of Registration No.: 2,767,215
Issued: September 23, 2003
For The Mark: DITTOS (stylized)

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DITTO APPAREL OF :
CALIFORNIA, INC., :
:
Petitioner, :
:
Cancellation No. 92046087
-against- :
:
CYNTHIA STEMRICH, :
:
Registrant. :
:
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CONSENTED MOTION TO AMEND PETITION FOR CANCELLATION

Pursuant to Trademark Rule 2.107, Petitioner hereby moves the Trademark Trial and Appeal Board for leave to file the Amended Petition for Cancellation annexed hereto. The parties are still engaged in discovery. Registrant has consented to the filing of the Amended Petition for Cancellation.

Respectfully submitted,
GOTTLIEB, RACKMAN & REISMAN, P.C.
Attorneys for Petitioner
270 Madison Avenue
New York, New York 10016-0601
(212) 684-3900

By Marc P. Misthal
Marc P. Misthal

Dated: New York, New York
February 28, 2007

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Cancellation No. 92046087

BOX TTAB FEE
Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

AMENDED PETITION FOR CANCELLATION

Petitioner, Ditto Apparel of California, Inc., a corporation duly organized and existing under the laws of Louisiana, located and doing business at Highway 8 East Colfax, Louisiana 71417(hereinafter "Ditto"), believes that it is or will be damaged by Registration No. 2,767,215 for the mark DITTOS (stylized) in International Class 25 covering "clothing, namely, young men's, children's and junior's jeans, shorts, t-shirts, tops, jackets and coats" and hereby petitions to cancel said Registration No. 2,767,215, pursuant to § 14 (3) of the Trademark Act of 1946, 15 U.S.C. § 1064 (3).

As grounds for the Petition, Petitioner, through its attorneys, alleges as follows:

1. Petitioner has been using the DITTOS mark and/or the trade name DITTO APPAREL OF CALIFORNIA (hereinafter both the trademark and trade name being referred to as the "DITTOS Mark") in connection with clothing since at least as early as July 1, 1971.

2. Registrant is the owner of record of Registration No. 2,767,215 for the mark DITTOS (stylized) in International Class 25 for "clothing, namely, young men's, children's and junior's jeans, shorts, t-shirts, tops, jackets and coats".

3. Upon information and belief, Registrant began using its DITTOS (stylized) mark on or about October 2, 2002, well after Petitioner began using its DITTOS Mark.

4. Petitioner filed an application (Serial No. 78/751,299) for the mark DITTOS in International Class 25 for "men's and women's pants, tops, jackets and skirts". In an Office Action dated May 22, 2006, the Examining Attorney refused registration of Petitioner's mark based on the existence of Registrant's registration.

5. Registrant's mark is identical to, a colorable imitation of, and confusingly similar to Petitioner's DITTOS Mark.

6. The goods set forth in Registrant's DITTOS (stylized) registration are identical, similar and/or related to the goods on which Petitioner has used the DITTOS Mark since at least as early as July 1, 1971, and on information and belief, the goods set forth in the Registrant's registration are sold through the same sources and/or similar channels of trade, and/or to the same general class of purchasers in and to which Petitioner's products are marketed and/or sold.

7. Registrant's registration of its DITTOS (stylized) mark is likely to cause confusion, mistake and/or to deceive as to origin, sponsorship and/or association of Petitioner's goods sold under its DITTOS Mark, and/or to mislead purchasers of Registrant's and/or Petitioner's goods, and/or the public in general, into believing that Petitioner's goods are sold by, emanate from and/or in some way, directly or indirectly, are associated with Registrant and/or Registrant's DITTOS (stylized) mark, or products, or vice versa, to the damage and detriment of Petitioner.

8. Petitioner is therefore likely to be damaged by Registrant's registration for its DITTOS (stylized) mark, and, insofar as Registrant's registration may prevent petitioner from securing a registration for its DITTOS mark, has already been damaged.

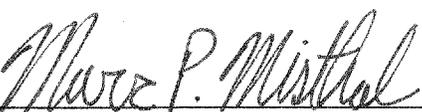
9. Registrant's said registration should also be cancelled under Section 2 of the Trademark Act, 15 U.S.C. § 1052, on the basis that Petitioner is the first use of the DITTOS Mark.

WHEREFORE, Petitioner prays that its Petition to Cancel be granted, and that Registration No. 2,767,215 for DITTOS (stylized) be canceled pursuant to Section 14 (3) of the Trademark Act of July 5, 1946, 15 U.S.C. § 1064 (3).

Petitioner submits herewith the required fee for filing the Petition to Cancel in the amount of \$300.00. The Commissioner is authorized to charge any additional required fees, or to credit any overpayment, to Deposit Account No. 07-1730.

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P.C.
Attorneys for Petitioner
270 Madison Avenue
New York, New York 10016-0601
(212) 684-3900

By 

Marc P. Misthal

Dated: New York, New York
February 28, 2007

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Consented Motion to Amend Petition for Cancellation and Amended Petition for Cancellation were served on February 28, 2007 via Federal Express, addressed as follows:

Lawrence A. Maxham, Esq.
The Maxham Firm
9330 Scranton Road, Suite 350
San Diego, California 92121



CERTIFICATE OF TRANSMITTAL

I hereby certify that the foregoing Consented Motion to Amend Petition for Cancellation and Amended Petition for Cancellation are being electronically transmitted to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA) this 28th day of February, 2007.

