

ESTTA Tracking number: **ESTTA187461**

Filing date: **01/18/2008**

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

**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	NAUTICA APPAREL, INC.		
Entity	Corporation	Citizenship	Delaware
Address	40 West 57th Street New York, NY 10019 UNITED STATES		

Attorney information	Stephen L. Baker Baker and Rannells, PA 575 Route 28, Suite 102 Raritan, NJ 08869 UNITED STATES s.baker@br-tmlaw.com,n.friedman@br-tmlaw.com,d.comunale@br-tmlaw.com, K.Hnasko@br-tmlaw.com,officeactions@br-tmlaw.com Phone:908-722-5640		
----------------------	---	--	--

**Registration Subject to Cancellation**

Registration No	1211177	Registration date	10/05/1982
International Registration No.	NONE	International Registration Date	NONE
Registrant	J. C. Hempel's Skibsfarve-Fabrik A/S 150 Lundtoftevej Lyngby, DENMARK		

**Goods/Services Subject to Cancellation**

Class 002. All goods and services in the class are cancelled, namely: Antifoulings Paint, Marine Coating, and Marine Paint
---

**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Related Proceedings	Simultaneous with this filing, Petitioner has filed a notice of opposition against Registrant's new trademark application for NAUTIC, Serial No. 79034586
---------------------	---

Attachments	SCAN2913_000.pdf ( 6 pages )(115486 bytes )
-------------	---

**Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address

record by First Class Mail on this date.

Signature	/Stephen L. Baker/
Name	Stephen L. Baker
Date	01/18/2008

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

In the Matter of Registration No. 1211177  
Registered: October 5, 1982

-----X			
NAUTICA APPAREL, INC.		Cancellation No.:	
	Petitioner	Mark:	NAUTIC
	v.	Reg. No.:	1211177
J. C. HEMPEL'S SKIBSFARVE-FABRIK A/S		Filed:	March 17, 1981
	Registrant	Issued:	October 5, 1982
-----X			

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

In the matter of trademark Reg. No. 1211177 for NAUTIC for Antifoulings Paint, Marine Coating, and Marine Paint ("Registrant's Goods") in Int. Class 002, issued to J. C. Hempel's Skibsfarve-Fabrik A/S ("Registrant") on October 5, 1982, Nautica Apparel, Inc., ("Petitioner") a corporation organized and existing under the laws of Delaware, located and doing business at 40 West 57th Street, New York, New York 10019, believes that it will be damaged by the continued registration of NAUTIC 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:

1.U.S. Registration No. 1211177 issued October 5, 1982 to J. C. Hempel's Skibsfarve-Fabrik A/S.

2. Upon information and belief, Registrant is a joint-stock company of Denmark having a business address at 150 Lundtoftevej, Lyngby, Denmark.

3. The Registration covers the trademark NAUTIC, for Antifoulings Paint, Marine Coating, and Marine Paint in International Class 002.

4. 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).

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

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

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

9. Registrant has abandoned the mark NAUTIC in the United States and its U.S. Reg. No. 1211177 therefor.

10. Upon information and belief, on or about October 3, 2002, Registrant filed a false and fraudulent Combined Declaration of Use In Commerce/Application For Renewal of Registration of Mark Under §§ 8 & 9 (15 U.S.C. §§ 1058 & 1059) in connection with its trademark registration wherein Registrant falsely claimed that Registrant was using Registrant's NAUTIC mark in commerce on or in connection with all of the goods listed in Trademark Registration No. 1211177.

11. The goods specified in Trademark Registration No. 1211177 are as follows:

“Antifoulings Paint, Marine Coating, and Marine Paint.”

12. Registrant’s Declaration contained the following statement:

The owner is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as currently used in commerce.

The undersigned, being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the owner, and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

13. Registrant’s claims that it was using the mark in commerce on or in connection with the goods listed in the Registration was false and fraudulent because the mark had not been used in commerce on or in connection with all of the goods listed in the Registration.

14. Registrant’s claims that it was using the mark in commerce on or in connection with the goods listed in the Registration was false and fraudulent because Registrant has not made use of the mark in commerce on or in connection with all of the goods listed in the Registration.

15. The false and fraudulent trademark declaration referred to above was allegedly made by an officer of Registrant personally on his own knowledge and was therefore made by a person who knew or should have known the same were false and fraudulent.

16. The false and fraudulent declaration referred to above was made with the intention that the USPTO rely upon the same.

17. The USPTO did rely on the false and fraudulent declaration referred to above when it acknowledged same and the registration was renewed.

18. Had the USPTO been aware of the false and fraudulent statements within the declaration, it would not have accepted the declaration nor would it have renewed the registration.

19. As a result, Registrant has perpetrated a fraud on the United States Patent and Trademark Office.

20. As a result of the fraud perpetrated on the United States Patent and Trademark Office the registration sought to be cancelled continues to exist to the detriment of Petitioner.

21. The continued existence of Reg. No. 1211177 creates a serious cloud on Petitioner's continued right to use a NAUTIC based mark, alone or in combination, for the same or similar goods to those contained in Registrant's registration.

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

23. Upon information and belief, the domestic representative of Registrant is:

Lawrence E. Abelman, Esq.  
Abelman, Frayne & Schwab  
150 East 42nd Street  
New York, NY 10017-5612

24. Upon information and belief, the Petitioner is to be served as follows:

J. C. Hempel's Skibsfarve-Fabrik A/S  
150 Lundtoftevej  
Lyngby  
Denmark

Or

Hempel A/S  
Lundtoftevej 150  
DK-2800 Kongens Lyngby  
Denmark



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Petitioner's Petition to Cancel in re NAUTICA APPAREL, INC. v. J. C. HEMPEL'S SKIBSFARVE-FABRIK A/S, was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 18th day of January, 2008 to Registrant and its domestic representative at the following addresses:

Lawrence E. Abelman, Esq.  
Abelman, Frayne & Schwab  
150 East 42nd Street  
New York, NY 10017-5612

J. C. Hempel's Skibsfarve-Fabrik A/S  
150 Lundtoftevej  
Lyngby  
Denmark

Hempel A/S  
Lundtoftevej 150  
DK-2800 Kongens Lyngby  
Denmark

/Neil B. Friedman/  
Neil B. Friedman