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Filing date: **07/23/2008**

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	Retail Licensing Company		
Entity	Corporation	Citizenship	Nevada
Address	101 Convention Center Drive Las Vegas, NV 89109 UNITED STATES		

Attorney information	Theodore R. Remaklus Wood, Herron & Evans, L.L.P. 441 Vine Street 2700 Carew Tower Cincinnati, OH 45202 UNITED STATES tremaklus@whepatent.com, sgraber@whepatent.com Phone:513-241-2324		
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Registration Subject to Cancellation

Registration No	2633279	Registration date	10/08/2002
Registrant	M&O ACTIVEWEAR, INC. Bosques de las Lomas Paseo de los Tamarindos 400 B Piso 11 Mexico DF, 05120 MEXICO		

Goods/Services Subject to Cancellation

Class 025. First Use: 2001/02/01 First Use In Commerce: 2001/02/01 All goods and services in the class are cancelled, namely: Clothing, namely shirts, [pants, skirts,] pajamas, sweatshirts, and pullovers

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

Attachments	Petition to Cancel.pdf (6 pages)(20763 bytes)
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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	/theodore r remaklus/
Name	Theodore R. Remaklus

Date	07/23/2008
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____)	
Retail Licensing Company)	Cancellation No. _____
)	
Petitioner,)	
)	Registration No. 2,633,279
v.)	Registered October 8, 2002
)	
M&O Activewear, Inc.)	
)	
Respondent.)	
_____)	

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION

Petitioner, Retail Licensing Company, a Nevada corporation having a place of business at 101 Convention Center Drive, Las Vegas, Nevada 89109 ("Petitioner") believes that it is and will continue to be damaged by the registration of the mark shown in Registration No. 2,633,279 for the trademark M&O KNITS and Design for "Clothing, namely shirts, pajamas, sweatshirts, and pullovers" and hereby petitions to cancel same.

GROUND FOR PETITION

As grounds for this petition, Petitioner alleges as follows:

1. Petitioner is the owner of United States Trademark Application Serial No. 78/736,440 (hereinafter "the '440 Application") filed October 19, 2005 under Section 1(b) of the Trademark Act on the basis of intent to use for the mark M+O for use in connection with:

Wearing apparel, clothing, and clothing accessories, namely, anoraks, parkas, wrist bands, bathing suits, bathing trunks, bathrobes, beach coverups, beachwear, clothing belts, Bermuda shorts, bikinis, blazers, blouses, bottoms, bras, underwear briefs, camisoles, capes, cardigans, coats, leather coats, overcoats, rain wear, rain coats, suits, suit coats, sport coats, top coats, dresses, dungarees, ear muffs, foul weather gear, gloves, ski gloves, gym suits, tops, halter tops, hosiery, jackets, leather jackets, wind-resistant jackets, jeans, jerseys, jodhpurs, jumpers, kerchiefs, knee highs, leg warmers leggings, lingerie, loungewear, miniskirts, mittens, mufflers, muffs, ear muffs, neckties, neckwear, overalls, pajamas, panties, pants, ski pants, snow pants, sweat pants, ponchos, pullovers, robes, sarongs, sashes, scarves, shawls, shifts, shirts, golf shirts, knit shirts, polo shirts, sport shirts, sweat shirts, undershorts, shorts, boxer shorts, gym shorts, sweat shorts, ski wear, skirts, slacks, sleep wear, slippers, slippers, jogging suits, sweat suits, warm-up suits, sweaters, turtleneck sweaters, V-neck sweaters, swim trunks, swim wear, swim suits, T-shirts, tank tops, bow ties, ties, tights, tracksuits, trousers, tunics, turtlenecks, underclothes, undergarments, underpants, undershirts, underwear, thermal underwear, vests, quilted vests; and footwear, including athletic footwear, espadrilles, athletic shoes, shoes, clogs, sandals, sneakers, thongs footwear, socks, sweat socks, and anklets; headwear, including bandannas, bandeaus, berets, visors, sun visors, head bands, hats, hoods, sweat bands, and caps in International Class 25; and

Retail store services, mail order services, catalog ordering services, and electronic retail store services using a global computer and/or communications network, all in the field of wearing apparel, clothing, clothing accessories, dormwear, underwear, camisoles, lingerie, pajamas and nightgowns, sweat pants, sweatshirts, warm-up pants and jackets, swimwear, outerwear, coats, vests, parkas, anoraks, jackets, pants, jeans, shorts, sweaters, shirts, neckwear, skirts, blouses, ski wear, snowboarding wear, footwear, hosiery, socks, belts, headwear, hats, caps, scarves in International Class 35.

2. On January 24, 2008, the Examining Attorney of the '440 Application issued an Office Action making final a refusal to register the M+O mark for the recited goods and services under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the grounds that the Examining Attorney concluded there was a likelihood of confusion with the mark M & O KNITS of U.S. Registration No. 2,633,279, which is registered for use in connection with "Clothing, namely shirts, pajamas, sweatshirts, and pullovers".

3. As a result of the Office Action in the '440 Application making final the refusal to register Petitioner's M+O mark over the M & O KNITS and Design mark of U.S. Registration

No. 2,633,279, Petitioner is being damaged by Registration No. 2,633,279 within the meaning of 15 U.S.C. § 1064.

4. On information and belief, Respondent M&O Activewear, Inc. is the owner of Registration No. 2,633,279 and is a Nevada corporation having offices at Bosques de las Lomas, Paseo de los Tamarindos 400 B Piso 11, Mexico DF, Mexico 05120.

5. Registration No. 2,633,279 was registered on October 8, 2002. On or about April 30, 2008, Respondent filed with the United States Patent and Trademark Office a Combined Declaration of Use and Incontestability Under Sections 8 & 15 stating under oath that it,

or its related company, has continuously used the [M & O KNITS and Design] mark in commerce for five (5) consecutive years after the date of registration . . . and is still using the mark in commerce on or in connection with [shirts, pajamas, sweatshirts, and pullovers].

(April 30, 2008 Combined Declaration of Use and Incontestability Under Sections 8 & 15.)

6. On information and belief, at the time of the filing of the Combined Declaration of Use and Incontestability Under Sections 8 & 15 on or about April 30, 2008 in connection with Registration No. 2,633,279, and since at least about 2002, Respondent has not and had not been using the M & O KNITS and Design mark in commerce on or in connection with pajamas, sweatshirts or pullovers.

7. On information and belief, Respondent abandoned the M&O KNITS and Design mark of Registration No. 2,633,279 with respect to pajamas, sweatshirts and pullovers by failing to use the mark in commerce on or in connection with those goods since at least about 2002.

8. On information and belief, pajamas, sweatshirts and pullovers should have been excluded from the Sections 8 and 15 affidavits, Registration No. 2,633,279 should not have been maintained in force with respect to those goods, and Registration No. 2,633,279 should be canceled with respect to those goods.

9. On information and belief, Respondent, with full knowledge that the M & O KNITS and Design mark of Registration No. 2,633,279 was not then being used in commerce on or in connection with pajamas, sweatshirts or pullovers, falsely stated under oath in the Declaration of Use and Incontestability Under Sections 8 & 15 that the M & O KNITS and Design mark of that registration was in use in commerce in connection with shirts, pajamas, sweatshirts and pullovers.

10. On information and belief, Respondent's statement under oath that the M&O KNITS and Design mark was in use in commerce on or in connection with pajamas, sweatshirts and pullovers, when in fact it was not, was a material representation of fact which it knew or should have known was false or misleading and that was made with the intention of misleading the United States Patent and Trademark Office to maintain Registration No. 2,633,279.

11. On information and belief, the United States Patent and Trademark Office relied upon the false statements in the Combined Declaration of Use and Incontestability Under Sections 8 & 15 when it issued on or about May 16, 2008, a Notice of Acceptance, accepting the Section 8 affidavit, and a Notice of Acknowledgement, acknowledging the Section 15 affidavit filed by Respondent in connection with U.S. Registration No. 2,633,279, thereby permitting the Registration No. 2,633,279 to remain in force.

12. The false statements made by Respondent to the USPTO in connection with U.S. Registration No. 2,633,279 constitute fraud and render that registration void, unenforceable and invalid.

WHEREFORE, Petitioner prays that the Petition for Cancellation be sustained in favor of Petitioner, that (1) U.S. Registration No. 2,633,279 for the mark M&O KNITS and Design be canceled with respect to pajamas, sweatshirts and pullovers as being abandoned and (2) U.S. Registration No. 2,633,279 for the trademark M & O KNITS and Design be cancelled in its entirety as a result of Respondent's fraud.

The fee required under 37 C.F.R. § 2.6(a)(16) is being submitted herewith. The Commissioner is authorized to charge Deposit Account No. 23-3000 for any deficiencies in the filing fee and any and all other fees associated with filing the Petition for Cancellation.

Respectfully submitted,

Retail Licensing Company

Date: July 23, 2008

By: /s/ Theodore R. Remaklus
Theodore R. Remaklus
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Cancellation has been served upon Respondent M&O Activewear, Inc., Bosques de las Lomas, Paseo de los Tamarindos 400 B Piso 11, Mexico DF, Mexico 05120 by air mail, and the attorney of record for Respondent, Matthew J. Himich, Esq., Thompson & Coburn LLP, One US Bank Plaza, St. Louis, Missouri 63101, by regular U.S. mail this 23rd day of July, 2008.

/s/ Theodore R. Remaklus
Theodore R. Remaklus

Attorney for Petitioner
Retail Licensing Company