

ESTTA Tracking number: **ESTTA306230**

Filing date: **09/15/2009**

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	Army and Air Force Exchange Service		
Entity	federal instrumentality	Citizenship	U.S.
Address	P.O. Box 650059 Dallas, TX 75265-0059 UNITED STATES		

Correspondence information	W. Barry Huggins Army and Air Force Exchange Service P.O. Box 650059 Dallas, TX 75265-0059 UNITED STATES hugginswb@aafes.com Phone:214-312-3545		
----------------------------	--	--	--

Registration Subject to Cancellation

Registration No	3600254	Registration date	03/31/2009
Registrant	Success Apparel LLC 19 West 34th Street New York, NY 10001 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2009/01/08 First Use In Commerce: 2009/01/08 All goods and services in the class are cancelled, namely: clothing for newborns, infants, toddlers, children and adults, namely, t-shirts, polo shirts, sports shirts, sweatshirts, sweatpants, warmup suits, dresses, skirts, blouses, sweaters, shorts, coats, jackets, vests, suits, raincoats, hats, visors, pants, jeans, [belts,] ties, scarves, gloves, stockings, underwear, bras, boxer shorts, briefs, panties, sleepwear, swimwear, infant wear [, and footwear]

Grounds for Cancellation

Other	Opposer has common-law priority of use, having placed goods of the same type under the same name in commerce and interstate commerce prior to Applicant's filing date.
-------	--

Related Proceedings	D*Coded, Notice of Opposition ESTTA 303893
---------------------	--

Attachments	Decoded Petition to Cancel.pdf (2 pages)(48083 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	/wbh/
Name	W. Barry Huggins
Date	09/15/2009

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

In the matter of trademark Registration No. 3600254
For the mark DECODED
Date Registered March 31, 2009

Army and Air Force Exchange Service
Petitioner
v.

Success Apparel
Registrant

PETITION TO CANCEL

Army and Air Force Exchange Service
3911 S. Walton Walker Blvd.
Dallas TX 75236-1598
Nonappropriated fund instrumentality of the U.S. Government

The above-identified petitioner believes that it will be damaged by the above-identified registration, and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. Petitioner began using the mark DECODED in commerce as early as March 2004, and first used its mark in interstate commerce as early as March 2004.
2. Petitioner uses the mark DECODED on young men's and young women's apparel, to include t-shirts, shorts, jeans, skirts, jackets, crop pants, cap sleeve tees, crewneck and long-sleeve shirts.
3. Petitioner has continuously used the mark in this manner in commerce since March 2004.
4. Registrant filed U.S. Trademark application serial number 78685456 on August 4, 2005, claiming an intent to use the mark DECODED for clothing for

newborns, infants, toddlers, children and adults, namely, t-shirts, polo shirts, sports shirts, sweatshirts, sweatpants, warmup suits, dresses, skirts, blouses, sweaters, shorts, coats, jackets, vests, suits, raincoats, hats, visors, pants, jeans, ties, scarves, gloves, stockings, socks, underwear, bras, boxer shorts, briefs, panties, sleepwear, swimwear, and infant wear.

5. This application subsequently matured into the above-referenced registration.

6. Petitioner first used its DECODED mark in commerce and interstate commerce prior to Registrant's filing date.

7. Petitioner operates its retail stores on military installations nationwide.

8. Registrant's DECODED mark so resembles Petitioner's DECODED mark that the valuable goodwill built up by Petitioner through prior use will be jeopardized by the continued registration of Registrant's confusingly similar mark.

WHEREFORE Petitioner prays that the Cancellation be SUSTAINED.

By /wbh/
W. Barry Huggins
Associate General Counsel
Army and Air Force Exchange Service

Date: 15 September 2009