

ESTTA Tracking number: **ESTTA346631**

Filing date: **05/10/2010**

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	SMASH MEN'S, INC.		
Entity	Corporation	Citizenship	California
Address	4801 STAUNTON AVENUE LOS ANGELES, CA 90058 UNITED STATES		

Attorney information	EDWARD R. SCHWARTZ CHRISTIE, PARKER & HALE, LLP P.O. BOX 7068 PASADENA, CA 91109-7068 UNITED STATES pto@cph.com Phone:626-795-9900		
----------------------	---	--	--

Registration Subject to Cancellation

Registration No	3064647	Registration date	03/07/2006
Registrants	Rosado, Radames PMB 831 PO Box 7891 Guaynabo, 009707891 PR Crespo, Zulma I. PMB 831 PO Box 7891 Guaynabo, 009707891 PR		

Goods/Services Subject to Cancellation

Class 025. First Use: 1995/09/09 First Use In Commerce: 1995/12/01 All goods and services in the class are cancelled, namely: T-shirts, polo shirts, tank tops, warm-up jackets, shirts, pants, socks, wristbands, skirts, dresses, caps, bandanas, footwear, sport sandals, and tennis shoes
--

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	75370836	Application Date	10/09/1997
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	SMASH
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1990/05/00 First Use In Commerce: 1990/10/00 MEN'S CLOTHING, NAMELY, SHIRTS, T-SHIRTS, PULLOVERS, PANTS, SHORTS, JACKETS, VESTS, AND SUITS

Attachments	S801 Petition for Cancellation.pdf (3 pages)(42715 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	/Edward R. Schwartz/
Name	EDWARD R. SCHWARTZ
Date	05/10/2010

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

In the matter of Trademark Registration No. 3,064,647
For the Mark SMASH SPORTS
Date registered March 7, 2006

SMASH MEN'S, INC. <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>RADAMES ROSADO AND ZULMA I. CRESPO</p> <p style="text-align: right;">Respondents.</p>	Cancellation No. PETITION FOR CANCELLATION
---	---

Petitioner SMASH MEN'S, INC., a California corporation, whose place of business is 4801 Staunton Avenue, Los Angeles, California, 90058, believes that it will be damaged by registration of the mark SMASH SPORTS which is the subject of Registration No. 3,064,647 and hereby seeks cancellation of said registration.

As grounds for cancellation, Petitioner alleges that:

1. On March 7, 2006, Trademark Registration No. 3,064,647 issued to Respondents for the mark SMASH SPORTS for T-shirts, polo shirts, tank tops, warm-up jackets, shirts, pants, socks, wristbands, skirts, dresses, caps, bandanas, footwear, sport sandals, and tennis shoes, in International Class 25.

2. Respondents filed the application which matured into the subject registration on February 5, 1996, claiming a date of first use of September 9, 1995 and a date of first use in commerce of December 1, 1995.

3. Approximately five years prior to Respondents' first use, Petitioner's predecessor-in-interest adopted and used and Petitioner continues to use the mark SMASH for men's clothing,

Docket No. 110.2*5/S801

namely, shirts, T-shirts, pullovers, pants, shorts, jackets, vests and suits.

4. Petitioner has invested a great deal of money and effort in promoting its goods under the mark SMASH and is continuing to extensively promote these goods. As a result of these activities, a valuable goodwill has developed for the SMASH mark which inures to Petitioner's benefit.

5. Registration of Respondents' mark is inconsistent with the rights of Petitioner.

6. Petitioner is the owner by assignment of Application Serial No. 75/370,836 for the mark SMASH. Petitioner claims a date of first use of the mark for the identified goods of May 1990 with a date of first use in commerce at least as early as October 1990.

7. In an Office action dated November 10, 2009, Petitioner's application to Register SMASH was rejected solely on the basis of an alleged likelihood of confusion with Respondents' registered trademark SMASH SPORTS.

8. Continued registration of SMASH SPORTS to Respondents is likely to injury Petitioner and to injure Petitioner's rights in its SMASH mark by causing confusion, mistake, and/or deception, as to the respective rights of the parties and as to the source, sponsorship, or affiliation of their goods and by preventing Petitioner from registering its mark.

WHEREFORE, Petitioner believes that it will be damaged by continued registration of SMASH SPORTS to Respondents and prays that Registration No. 3, 064,647 be canceled.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By 
Edward R. Schwartz
Attorneys for Petitioner
P.O. Box 7068
Pasadena, CA 91109-7068
(626) 795-9900

Docket No. 110.2*5/S801

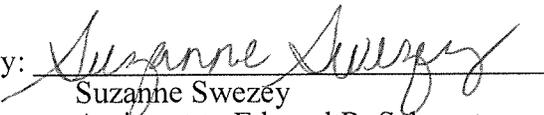
CERTIFICATE OF TRANSMISSION AND SERVICE

I certify that on May 10, 2010, the foregoing PETITION FOR CANCELLATION is being electronically transmitted for filing to the:

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

It is further certified that on May 10, 2010, the PETITION FOR CANCELLATION is being served by mailing a copy thereof by U.S. Postal Service, first-class mail, addressed to:

Radames Rosado
Zulma I. Crespo
PMB 831
P.O. Box 7891
Guaynabo, Puerto Rico 009707891

By: 
Suzanne Swezey
Assistant to Edward R. Schwartz
Christie, Parker & Hale, LLP
P.O. Box 7068
Pasadena, CA 91109-7068
Phone: 626-795-9900
Email: pto@cph.com

SES PAS900833.1-* -05/10/10 4:02 PM