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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	Kohl's Department Stores, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	N56 W17000 Ridgewood Drive Menomonee Falls, WI 53051 UNITED STATES		

Attorney information	Vonn R. Christenson Call & Jensen 610 Newport Center Drive, Suite 700 Newport Beach, CA 92660 UNITED STATES vchristenson@calljensen.com, sshaw@calljensen.com, morr@calljensen.com, myusuf@calljensen.com, cdaly@calljensen.com, kdominick@calljensen.com Phone:949-717-3000
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Registrations Subject to Cancellation

Registration No	3779506	Registration date	04/20/2010
Registrant	Peace & Love Jewelry by Nancy Davis LLC 616 Nimes Road Los Angeles, CA 90077 UNITED STATES		

Goods/Services Subject to Cancellation

Class 018. First Use: 2003/06/00 First Use In Commerce: 2003/06/00 All goods and services in the class are cancelled, namely: Handbags, tote bags, purses, shoulder bags

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)		
Genericness	Trademark Act section 23		
Abandonment	Trademark Act section 14		
The mark is merely descriptive	Trademark Act section 2(e)(1)		
Other	Dilution of Respondent's mark; widespread third-party use in the marketplace; generic; descriptive; ornamental; decorative in design; not inherently distinctive; lacks secondary meaning as to any source identification; fraudulent identification of goods and first use dates; and abandonment through non-use and/or changed use over time.		
Registration No	3779507	Registration date	04/20/2010

Registrant	Peace & Love Jewelry by Nancy Davis LLC 616 Nimes Road Los Angeles, CA 90077 UNITED STATES
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Goods/Services Subject to Cancellation

Class 018. First Use: 2003/06/00 First Use In Commerce: 2003/06/00 All goods and services in the class are cancelled, namely: Handbags, tote bags, purses, shoulder bags
Class 025. First Use: 2003/06/00 First Use In Commerce: 2003/06/00 All goods and services in the class are cancelled, namely: Clothing, namely, t-shirts, shirts, sweatpants, sweatshirts, jeans, pants, dresses, shorts, tops, bottoms, headwear, headwear accessories, namely, scarves, head bands, berets, hats; footwear, belts

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Genericness	Trademark Act section 23
Abandonment	Trademark Act section 14
The mark is merely descriptive	Trademark Act section 2(e)(1)
Other	Dilution of Respondent's mark; widespread third-party use in the marketplace; generic; descriptive; ornamental; decorative in design; not inherently distinctive; lacks secondary meaning as to any source identification; fraudulent identification of goods and first use dates; and abandonment through non-use and/or changed use over time.

Related Proceedings	Peace & Love Jewelry by Nancy Davis LLC v. Kohl's Department Stores, Inc., U.S. Central District of California Case No. CV10-0417 GW; Kohl's Department Stores, Inc. v. Peace & Love Jewelry by Nancy Davis LLC, Trademark Trial and Appeal Board Opposition No. 91194803
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Attachments	Petition for Cancellation.pdf (6 pages)(40519 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	/Vonn R. Christenson/
Name	Vonn R. Christenson
Date	06/02/2010

1 handbags, tote bags, purses, and shoulder bags. Respondent's claimed first use of this
2 mark is in June 2003.

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4 **Description of Registration No. 3,779,507:** Filed on June 12, 2008. Published
5 for opposition on August 4, 2009. Registered on April 20, 2010. This mark consists of
6 a heart with a superimposed peace symbol. This mark was registered on the Principal
7 Register, in international class 18 for handbags, tote bags, purses, and shoulder bags;
8 and international class 25 for clothing, namely, t-shirts, shirts, sweatpants, jeans, pants,
9 dresses, shorts, tops, bottoms, headwear, headwear accessories, namely, scarves, head
10 bands, berets, hats; footwear, and belts. Respondent's claimed first use of this mark is
11 in June 2003.

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13 **Statement of the Claim:**

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15 As grounds of this Petition, it is alleged that:

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17 1. Petitioner owns and operates family-oriented department stores throughout
18 the United States, including California. It primarily sells moderately priced apparel,
19 footwear, and accessories for women, men, and children. Petitioner offers for sale and
20 sells products bearing national brands, as well as private and exclusive brands found
21 only at Petitioner's stores.

22
23 2. Upon information and belief, many fashion companies, including
24 department stores, have sold apparel products and accessories incorporating the "peace
25 & love" theme. The peace symbol is generally representative of the 1970's era, in
26 which many people promoted peace and love. Additionally, the heart symbol is
27 commonly recognized and associated with love. The combination of these two
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1 themes—even taken together as a whole—is common and widespread in the fashion
2 industry, with extensive prior and continuing third-party in the marketplace.

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4 3. Indeed, Petitioner, like many others in the fashion industry, has sold well-
5 known apparel, jewelry, and related accessories incorporating the peace symbol and
6 heart design, and the words “peace & love,” for years. This widespread use of the
7 words “peace & love”, and the design of a heart with a superimposed peace symbol, has
8 resulted in both likelihood of dilution, and actual dilution, of any alleged “peace &
9 love” marks – including the marks claimed by Respondent.

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11 4. Nevertheless, through Respondent’s trademark registrations, Respondent
12 seeks to prevent others’ continued use of the words “peace & love”, and the design of a
13 heart with a superimposed peace symbol, on apparel and related accessories.

14
15 5. However, Respondent’s marks are merely generic, descriptive, ornamental,
16 and/or decorative in design, are not inherently distinctive, and lack secondary meaning
17 as to any source identification.

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19 6. Furthermore, the words “peace & love” are merely descriptive as applied
20 to the goods for which the generic heart and peace symbol appear.

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22 7. Also, the heart and peace symbol designs—both as separate designs and in
23 combination together—are generic and are used extensively in connection with fashion
24 and jewelry products.

25
26 8. Moreover, Respondent will not be able to establish that its registered marks
27 have established secondary meaning under Section 2(f), particularly in light of the fact
28 that Respondent’s alleged marks have not become distinctive of Respondent’s goods in

1 commerce, that no customer recognition of said marks as identifying only Respondent
2 has been achieved, and due to extensive prior and continuing third party use.

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4 9. In addition, Respondent’s alleged marks are not entitled to registration
5 because the words “peace & love” are the common descriptive name for designs
6 incorporating the use of heart designs and peace symbols. Also, the words “peace &
7 love” have become the generic name of all such goods which incorporate the use of the
8 heart design and peace symbol, which are of widespread use by competitors in the
9 marketplace. Therefore, Respondent’s registered marks do not function to identify
10 Respondent’s goods and distinguish them from goods offered by others.

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12 10. Upon information and belief, even if Respondent’s alleged marks are
13 entitled to registration for *some* goods (which Petitioner denies), they are nonetheless
14 not entitled to registration for *all* of the goods for which Respondent has obtained
15 registration. As indicated above, Respondent’s registrations were granted for handbags,
16 tote bags, purses, and shoulder bags; and clothing, namely, t-shirts, shirts, sweatpants,
17 jeans, pants, dresses, shorts, tops, bottoms, headwear, headwear accessories, namely,
18 scarves, head bands, berets, hats; footwear, and belts. Also, Respondent’s trademark
19 applications have a claimed first use date of June 2003 for each of these goods.
20 However, upon information and belief, Respondent did not use the alleged marks in
21 trade by June 2003 on some or all of the goods listed on Respondent’s trademark
22 registrations, and Respondent’s applications failed to provide support for said alleged
23 use. Upon information and belief, Respondent knew or should have known that its
24 statements of use for its alleged trademarks were materially incorrect in wrongfully
25 identifying goods and first use dates that were not true for the subject marks.
26 Accordingly, Respondent’s trademark registrations were fraudulently obtained and
27 should be cancelled.

1 11. Further upon information and belief, even if Respondent initially used its
2 alleged marks in trade by June 2003 on some of the goods identified in Respondent’s
3 statements of use (which Petitioner denies), Respondent subsequently abandoned those
4 rights in failing to continuously use those marks in trade after their stated first use date.
5 Indeed, Respondent filed its trademark applications on June 12, 2008 under section 1(b)
6 of the Lanham Act, which applies to applications with a bona fide *intent* to use the
7 alleged marks in commerce – not for actual use (which suggests that Respondent did not
8 in fact use the alleged marks prior to Respondent’s applications). Nonetheless,
9 Respondent’s subsequently-filed statements of use claim that Respondent first used its
10 alleged marks as early as June 2003 with the identified goods. Upon information and
11 belief, even if Respondent’s first use dates are correct (which Petitioner denies),
12 Respondent did not continuously use its alleged marks in trade after June 2003, and thus
13 those marks should be deemed abandoned.

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15 12. Even if otherwise valid, Respondent’s marks should nonetheless be
16 deemed abandoned due to Respondent’s inconsistent use of its alleged marks, and its
17 subsequently changed use of those marks in kind and in format.

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19 13. Petitioner is likely to be damaged by Respondent’s registered marks in that
20 the prima facie effect of such registrations tend to impair Petitioner’s right to
21 descriptive use of said terms and designs, and as evidenced by the fact that Respondent
22 has recently sued Petitioner in federal district court in the case titled *Peace & Love*
23 *Jewelry by Nancy Davis LLC v. Kohl’s Department Stores, Inc.*, U.S. Central District of
24 California Case No. CV10-0417 GW, for trademark infringement and related causes of
25 action based on Respondent’s alleged rights to the “peace & love” design.

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27 14. In view of the above allegations, Respondent is not entitled to continue
28 registration of its alleged marks in that Respondent is not entitled exclusive use in

1 commerce of its “peace and love” design on the goods specified, and further, that
2 Respondent’s alleged marks do not function to identify Respondent’s goods and
3 distinguish them from those offered by others.
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5 WHEREFORE, Petitioner prays that Registration Nos. 3,779,506 and 3,779,507
6 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.
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8 Petitioner hereby appoints Scott P. Shaw and Vonn R. Christenson of the law
9 firm Call & Jensen, both members of the bar of the State of California, to act as
10 attorneys for Petitioner herein, with full power to prosecute said Petition, to transact all
11 relevant business with the Patent and Trademark Office and in the United States Courts,
12 and to receive all official communications in connection with this Petition for
13 Cancellation.
14

15 Respectfully submitted,

16 Dated: June 2, 2010

By: Vonn R. Christenson/
Vonn R. Christenson

Attorneys for Kohl’s Department Stores, Inc.

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