

ESTTA Tracking number: **ESTTA431668**

Filing date: **09/21/2011**

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	XP Innovation, LLC		
Entity	Limited Liability Company	Citizenship	Indiana
Address	1 Competition Way Mt. Vernon, IN 47620 UNITED STATES		

Attorney information	Louis T. Perry Baker & Daniels LLP 300 North Meridian Street Suite 2700 Indianapolis, IN 46204 UNITED STATES inteas@bakerd.com, louis.perry@bakerd.com Phone:(317) 237-0300
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**Registration Subject to Cancellation**

Registration No	3503676	Registration date	09/23/2008
Registrant	Just Racing, Ltd 4 Wishbone Lane North Oaks, MN 55127 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 025. First Use: 2007/01/15 First Use In Commerce: 2007/01/15 All goods and services in the class are cancelled, namely: Clothing, namely, T-shirts, pants, shorts, hats, jackets, socks, shoes, gloves, head wear, and suspenders
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**Grounds for Cancellation**

Abandonment	Trademark Act section 14
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Attachments	Scan_Attachment438230093-000.PDF ( 53 pages )(2486317 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	/Louis T. Perry/
Name	Louis T. Perry
Date	09/21/2011



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

XP INNOVATION, LLC	)	
	)	
Petitioner,	)	
	)	
vs.	)	Cancellation No.
	)	Registration No. 3,503,676
JUST RACING, LTD.	)	Mark: JUST RACING
	)	
Registrant.	)	

**PETITION TO CANCEL**

Petitioner XP Innovation, LLC ("XP") believes it is and will be harmed and damaged by the continued registration of the mark JUST RACING, Reg. No. 3,503,676 (the "'676 Registration"), owned by Registrant Just Racing, Ltd. ("Registrant"), and petitions to cancel the '676 Registration pursuant to Section 14 of the Lanham Act, 15 U.S.C. § 1064, and 37 C.F.R. § 2.111. XP alleges the following grounds for this Petition:

1. On information and belief, Registrant is a corporation organized under the laws of Minnesota having an address of 4 Wishbone Lane, North Oaks, MN 55127.
2. Registrant owns the '676 Registration for the mark JUST RACING for use in association with "clothing, namely, T-shirts, pants, shorts, hats, jackets, socks, shoes, gloves, head wear, and suspenders."
3. The '676 Registration issued on September 23, 2008.
4. XP is an Indiana limited liability company having an address of 1 Competition Way, Mt. Vernon, Indiana.

5. XP owns two pending intent-to-use applications to register the marks JUST RACE (design) and JUST RACE! (the "XP Marks") on the Principal Register of the United States Patent and Trademark Office:

Mark	Serial No.	Goods/Services
<b>JUST RACE</b>	85/322,915	IC 018. Backpacks, sports bags, and wallets IC 022. Lanyards IC 025. Shirts, bandanas, hats, socks IC 035. Mail order services featuring bicycles and bicycle parts
JUST RACE!	85/322,913	IC 018. Backpacks, sports bags, and wallets IC 022. Lanyards IC 025. Shirts, bandanas, hats, socks IC 035. Mail order services featuring bicycles and bicycle parts

6. Copies of the applications to register the XP Marks are attached hereto as Exhibits 1 and 2.

7. XP independently has attempted to identify use in commerce of the mark JUST RACING by Registrant—without success.

8. XP's independent attempts to identify use in commerce of the mark JUST RACING by Registrant indicate that Registrant has not used the mark JUST RACING in commerce for several years.

9. On information and belief, Registrant has abandoned any bona fide use of the mark JUST RACING and the underlying '676 Registration.

10. On information and belief, Registrant has discontinued any use of the mark JUST RACING underlying the '676 Registration that it might have made with an intent not to resume such use.

11. On information and belief, Registrant's non-use of the JUST RACING mark underlying '676 Registration has persisted for several years—potentially for at least three consecutive years.

12. Pursuant to Section 45 of the Lanham Act, 15 U.S.C. § 1127, Registrant therefore has abandoned the JUST RACING mark underlying the '676 Registration. Accordingly, the '676 Registration should be cancelled in its entirety pursuant to 15 U.S.C. § 1064.

13. Because XP owns pending intent-to-use applications for the XP Marks and intends to use the XP Marks in interstate commerce, XP believes that it is, will be, and will continue to be damaged by Registrant's persisting registration of the JUST RACING mark underlying the '676 Registration. Such damage includes, but is not limited to, the USPTO's refusal to register XP's applications for the XP Marks based on a likelihood of confusion with the JUST RACING mark. Copies of the relevant office actions issued against XP's applications for the XP Marks are attached as Exhibits 3 and 4.

14. XP petitions to cancel the '676 Registration.

15. The \$300.00 cancellation petition filing fee is being submitted concurrently with this Petition to Cancel. The Commissioner is authorized to debit the deposit account of Baker & Daniels LLP for any deficiency in the required fee.

16. WHEREFORE, XP therefore requests the Board sustain this proceeding in XP's favor and cancel Registration No. 3,503,676.

Dated: September 21, 2011

Respectfully submitted,

BAKER & DANIELS LLP

By: 

Louis T. Perry  
Amie Peele Carter  
300 North Meridian Street  
Suite 2700  
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Tel: 317.237.0300  
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louis.perry@bakerd.com  
amie.peelecarter@bakerd.com

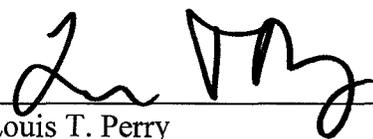
*Attorneys for Petitioner, XP  
Innovation, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing PETITION TO CANCEL was served on Registrant on September 21, 2011, via first class mail to:

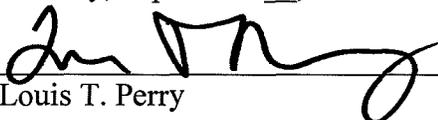
Just Racing, Ltd.  
c/o President Joel Navickas  
4 Wishbone Lane  
North Oaks, Minnesota 55127

BAKER & DANIELS LLP

  
Louis T. Perry

**CERTIFICATE OF TRANSMITTAL**

I hereby certify that a true copy of the foregoing PETITION TO CANCEL is being filed electronically with the TTAB via ESTTA on this day, September 21, 2011.

  
Louis T. Perry

*Attorney for Petitioner, XP Innovation, LLC*

**Exhibit 1**

## Trademark/Service Mark Application, Principal Register

Serial Number: 85322915

Filing Date: 05/17/2011

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	85322915
<b>MARK INFORMATION</b>	
*MARK	<u>\\TICRS\EXPORT11\IMAGEOUT 11\853\229\85322915\xml1\ APP0002.JPG</u>
SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	JUST RACE
COLOR MARK	NO
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the stylized word "JUST" followed by a lightning bolt with the stylized word "RACE" after it.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	943 x 250
REGISTER	Principal
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	XP Innovation, LLC
DBA/AKA/TA/Formerly	DBA Dan's Comp
*STREET	1 Competition Way
*CITY	Mt. Vernon
*STATE (Required for U.S. applicants)	Indiana
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	47620
<b>LEGAL ENTITY INFORMATION</b>	

<b>TYPE</b>	limited liability company
<b>STATE/COUNTRY WHERE LEGALLY ORGANIZED</b>	Indiana
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>INTERNATIONAL CLASS</b>	018
<b>*IDENTIFICATION</b>	Backpacks, sports bags, and wallets
<b>FILING BASIS</b>	SECTION 1(b)
<b>INTERNATIONAL CLASS</b>	022
<b>*IDENTIFICATION</b>	Lanyards
<b>FILING BASIS</b>	SECTION 1(b)
<b>INTERNATIONAL CLASS</b>	025
<b>*IDENTIFICATION</b>	Shirts, bandanas, hats, socks
<b>FILING BASIS</b>	SECTION 1(b)
<b>INTERNATIONAL CLASS</b>	035
<b>*IDENTIFICATION</b>	Mail order services featuring bicycles and bicycle parts
<b>FILING BASIS</b>	SECTION 1(b)
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Louis T. Perry
<b>ATTORNEY DOCKET NUMBER</b>	XPI-T0030e
<b>FIRM NAME</b>	Baker & Daniels LLP
<b>INTERNAL ADDRESS</b>	Suite 2700
<b>STREET</b>	300 North Meridian Street
<b>CITY</b>	Indianapolis
<b>STATE</b>	Indiana
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	46204
<b>PHONE</b>	(317) 237-0300
<b>FAX</b>	(317) 237-1000
<b>EMAIL ADDRESS</b>	intead@bakerd.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes

<b>OTHER APPOINTED ATTORNEY</b>	Jonathan C. Anderson, Ryan C. Barker, Michelle Kaiser Bray, Jonathan B. Burns, Amie Peele Carter, Marcelo S. Copat, Adam F. Cox, Jamie M. Drewry, John J. Emanuele, Kevin R. Erdman, Eric J. Groen, Stephanie A. Gumm, Norman J. Hedges, Jennett M. Hill, John F. Hoffman, David P. Irmscher, Brad R. Maurer, William S. Meyers, Timothy E. Niednagel, Robert D. Null, Jay M. Sanders, James J. Saul, Michael D. Schwartz, Daniel Tychonievich, and Douglas A. Yerkeson of Baker & Daniels LLP
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	Louis T. Perry
<b>FIRM NAME</b>	Baker & Daniels LLP
<b>INTERNAL ADDRESS</b>	Suite 2700
<b>STREET</b>	300 North Meridian Street
<b>CITY</b>	Indianapolis
<b>STATE</b>	Indiana
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	46204
<b>PHONE</b>	(317) 237-0300
<b>FAX</b>	(317) 237-1000
<b>EMAIL ADDRESS</b>	inteas@bakerd.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	4
<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	1300
<b>*TOTAL FEE PAID</b>	1300
<b>SIGNATURE INFORMATION</b>	
<b>SIGNATURE</b>	/Louis T. Perry/
<b>SIGNATORY'S NAME</b>	Louis T. Perry
<b>SIGNATORY'S POSITION</b>	attorney of record, Indiana bar member
<b>DATE SIGNED</b>	05/17/2011

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## Trademark/Service Mark Application, Principal Register

**Serial Number: 85322915**

**Filing Date: 05/17/2011**

### To the Commissioner for Trademarks:

**MARK:** JUST RACE (stylized and/or with design, see mark)

The literal element of the mark consists of JUST RACE.

The mark consists of the stylized word "JUST" followed by a lightning bolt with the stylized word "RACE" after it.

The applicant, XP Innovation, LLC, DBA Dan's Comp, a limited liability company legally organized under the laws of Indiana, having an address of

1 Competition Way

Mt. Vernon, Indiana 47620

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 018: Backpacks, sports bags, and wallets

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 022: Lanyards

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 025: Shirts, bandanas, hats, socks

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 035: Mail order services featuring bicycles and bicycle parts

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Attorney Information:

Louis T. Perry and Jonathan C. Anderson, Ryan C. Barker, Michelle Kaiser Bray, Jonathan B. Burns,

Amie Peele Carter, Marcelo S. Copat, Adam F. Cox, Jamie M. Drewry, John J. Emanuele, Kevin R. Erdman, Eric J. Groen, Stephanie A. Gumm, Norman J. Hedges, Jennett M. Hill, John F. Hoffman, David P. Irmischer, Brad R. Maurer, William S. Meyers, Timothy E. Niednagel, Robert D. Null, Jay M. Sanders, James J. Saul, Michael D. Schwartz, Daniel Tychonievich, and Douglas A. Yerkeson of Baker & Daniels LLP of Baker & Daniels LLP

Suite 2700  
300 North Meridian Street  
Indianapolis, Indiana 46204  
United States

The attorney docket/reference number is XPI-T0030e.

The applicant's current Correspondence Information:

Louis T. Perry  
Baker & Daniels LLP  
Suite 2700  
300 North Meridian Street  
Indianapolis, Indiana 46204  
(317) 237-0300(phone)  
(317) 237-1000(fax)  
inteas@bakerd.com (authorized)

A fee payment in the amount of \$1300 has been submitted with the application, representing payment for 4 class(es).

#### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Louis T. Perry/ Date Signed: 05/17/2011  
Signatory's Name: Louis T. Perry  
Signatory's Position: attorney of record, Indiana bar member

RAM Sale Number: 1254  
RAM Accounting Date: 05/18/2011

Serial Number: 85322915

Internet Transmission Date: Tue May 17 14:57:54 EDT 2011

TEAS Stamp: USPTO/BAS-174.46.163.5-20110517145754766

708-85322915-480a39f26ea5e4d4be39cf42140

50566f4a-DA-1254-20110517144904021265

**JUST  RACE**

**Exhibit 2**

**To:** XP Innovation, LLC ([inteas@bakerd.com](mailto:inteas@bakerd.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 85322915 - JUST RACE - XPI-T0030e  
**Sent:** 9/5/2011 11:17:02 PM  
**Sent As:** ECOM102@USPTO.GOV  
**Attachments:** [Attachment - 1](#)  
[Attachment - 2](#)  
[Attachment - 3](#)  
[Attachment - 4](#)  
[Attachment - 5](#)  
[Attachment - 6](#)  
[Attachment - 7](#)  
[Attachment - 8](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**APPLICATION SERIAL NO.** 85322915

**MARK:** JUST RACE

**\*85322915\***

**CORRESPONDENT ADDRESS:**

LOUIS T. PERRY  
BAKER & DANIELS LLP  
300 N MERIDIAN ST STE 2700  
INDIANAPOLIS, IN 46204-1782

**CLICK HERE TO RESPOND TO THIS LETTER:**  
[http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp)

**APPLICANT:** XP Innovation, LLC

**CORRESPONDENT'S REFERENCE/DOCKET  
NO:**

XPI-T0030e

**CORRESPONDENT E-MAIL ADDRESS:**

[inteas@bakerd.com](mailto:inteas@bakerd.com)

**OFFICE ACTION**

**STRICT DEADLINE TO RESPOND TO THIS LETTER**

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE BELOW.

**ISSUE/MAILING DATE:** 9/5/2011

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

**SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION AS TO CLASS 025 ONLY**

Registration of the applied-for mark is refused, as to class 025 only, because of a likelihood of confusion with the mark in U.S. Registration No. 3503676. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 *et seq.* See the enclosed registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. See 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). See TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. See *In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

The applicant's mark is JUST RACE! in standard characters for "Shirts, bandanas, hats, socks" in International Class 025. The registrant's mark is JUST RACING in standard characters for "Clothing, namely, T-shirts, pants, shorts, hats, jackets, socks, shoes, gloves, head wear, and suspenders."

**Marks are Similar**

The marks are similar because they share the wording JUST and variations of the term RACE. Here, the different tenses of the term RACE do not alter the commercial impression of the marks because the meanings remain similar.

The applicant's mark also includes the design of a lightning bolt between the terms JUST and RACE. When a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods and/or services; therefore, the word portion is normally accorded greater weight in determining whether marks are confusingly similar. *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); TMEP §1207.01(c)(ii); see *CBS Inc. v. Morrow*, 708 F. 2d 1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir 1983); *In re Kysela Pere et Fils, Ltd.*, 98 USPQ2d 1261, 1267-68 (TTAB 2011).

Further, the registered mark in standard characters. A mark in typed or standard characters may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display. TMEP §1207.01(c)(iii); see 37 C.F.R. §2.52(a). Thus, a mark presented in stylized characters or otherwise in special form generally will not avoid likelihood of confusion with a mark in typed or standard characters because the marks could be presented in the same manner of display. See, e.g., *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 1041, 216 USPQ 937, 939 (Fed. Cir. 1983) (stating that "the

argument concerning a difference in type style is not viable where one party asserts rights in no particular display”); *In re Melville Corp.*, 18 USPQ2d 1386, 1387-88 (TTAB 1991); *In re Pollio Dairy Prods. Corp.*, 8 USPQ2d 2012, 2015 (TTAB 1988).

### **Goods Are Related**

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. See *Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient that the goods and/or services are related in some manner and/or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); see, e.g., *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

The applicant’s and the registrant’s goods are identical clothing items that likely to travel through the same channels of trade to the same classes of purchasers. For example, both would likely be sold at clothing and department stores. See attached Internet website evidence showing the goods of the parties sold through the same types of stores. Accordingly, because confusion as to source is likely, registration is refused, as to class 025, under Trademark Act Section 2(d) based on a likelihood of confusion.

Any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); see *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

Although applicant’s mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

### **IDENTIFICATION OF GOODS**

Descriptions of goods and services should use the common, ordinary name for the goods and/or services. TMEP §1402.01. If there is no common, ordinary name for the goods and/or services, applicant should describe the goods and/or services using wording that would be generally understood by the average person. See *Cal. Spray-Chem. Corp. v. Osmose Wood Pres. Co. of Am.*, 102 USPQ 321, 322 (Comm’r Pats. 1954); *Schenley Indus., Inc. v. Battistoni*, 112 USPQ 485, 486 (Comm’r Pats. 1957); TMEP §1402.01.

An in depth knowledge of the relevant field should not be necessary for understanding a description of the goods and/or services. TMEP §1402.01. “[T]echnical, high-sounding verbiage” should be avoided. *Cal. Spray-Chem.*, 102 USPQ at 322.

The Office requires a degree of particularity necessary to identify clearly goods and/or services covered by a mark. See *In re Omega SA*, 494 F.3d 1362, 1365, 83 USPQ2d 1541, 1543-44 (Fed. Cir. 2007).

Descriptions of goods and services in applications must be specific, explicit, clear and concise. TMEP §1402.01; see *Cal. Spray-Chem. Corp. v. Osmose Wood Pres. Co. of Am.*, 102 USPQ 321, 322 (Comm’r Pats. 1954); *In re Cardinal Labs., Inc.*, 149 USPQ 709, 711 (TTAB 1966).

The identification of goods is indefinite and must be clarified because the wording “lanyards” require

further clarification. See TMEP §1402.01. Applicant may adopt the following identification, if accurate:

Lanyards for holding {indicate use, e.g., eyeglasses, badges, keys}, in International Class 022.

Identifications of goods can be amended only to clarify or limit the goods; adding to or broadening the scope of the goods is not permitted. 37 C.F.R. §2.71(a); see TMEP §§1402.06 *et seq.*, 1402.07. Therefore, applicant may not amend the identification to include goods that are not within the scope of the goods set forth in the present identification.

For assistance with identifying and classifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netahtml/tidm.html>. See TMEP §1402.04.

## **RESPONSES**

For this application to proceed toward registration, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options for responding to a refusal and should consider such options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements.

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end, the trademark will fail to register, and the application fee will not be refunded. See 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a), 2.209(a); TMEP §§405.04, 718.01, 718.02. Where the application has been abandoned for failure to respond to an Office action, applicant's only option would be to file a timely petition to revive the application, which, if granted, would allow the application to return to live status. See 37 C.F.R. §2.66; TMEP §1714. There is a \$100 fee for such petitions. See 37 C.F.R. §§2.6, 2.66(b)(1).

Applicant is encouraged to email ([cheryl.clayton@uspto.gov](mailto:cheryl.clayton@uspto.gov)) the assigned trademark examining attorney to resolve the issues raised in this Office action.

To expedite prosecution of the application, applicant is encouraged to file its response to this Office action online via the Trademark Electronic Application System (TEAS), which is available at <http://www.uspto.gov/teas/index.html>. If applicant has technical questions about the TEAS response to Office action form, applicant can review the electronic filing tips available online at <http://www.uspto.gov/teas/eFilingTips.htm> and email technical questions to [TEAS@uspto.gov](mailto:TEAS@uspto.gov).

Cheryl Clayton  
/CAC/  
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571-272-9254  
[cheryl.clayton@uspto.gov](mailto:cheryl.clayton@uspto.gov)

**TO RESPOND TO THIS LETTER:** Go to [http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp). Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

**All informal e-mail communications relevant to this application will be placed in the official application record.**

**WHO MUST SIGN THE RESPONSE:** It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

**TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS:** Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

Print: Sep 2, 2011

77197500

**DESIGN MARK**

**Serial Number**  
77197500

**Status**  
REGISTERED

**Word Mark**  
JUST RACING

**Standard Character Mark**  
Yes

**Registration Number**  
3503676

**Date Registered**  
2008/09/23

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(4) STANDARD CHARACTER MARK

**Owner**  
Just Racing, Ltd CORPORATION MINNESOTA 4 Wishbone Lane North Oaks  
MINNESOTA 55127

**Goods/Services**  
Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing,  
namely, T-shirts, pants, shorts, hats, jackets, socks, shoes, gloves,  
head wear, and suspenders. First Use: 2007/01/15. First Use In  
Commerce: 2007/01/15.

**Filing Date**  
2007/06/05

**Examining Attorney**  
VASQUEZ, JENNIFER

# Just Racing

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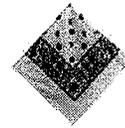
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<p><b>Joe Boxer Basic Paisley Bandana</b></p> <p><del>\$1.99</del> <b>\$1.39</b></p> <p><a href="#">Details Page</a></p> <p><input type="checkbox"/> Add to Compare</p> <p><input checked="" type="checkbox"/> Ship Vantage Eligible</p> <p><b>GO</b> <input type="checkbox"/> Unavailable at 6411 Riggs Road ( 20783 )</p> <p><a href="#">Check other stores</a></p>	<p><b>Pink K Women's Notch Collar Bandana Print Duster with Lace</b></p> <p><del>\$9.99</del> <b>\$9.93</b></p> <p><a href="#">Details Page</a></p> <p><input type="checkbox"/> Add to Compare</p> <p><input checked="" type="checkbox"/> Ship Vantage Eligible</p> <p><b>GO</b> <input type="checkbox"/> Unavailable at 6411 Riggs Road ( 20783 )</p> <p><a href="#">Check other stores</a></p>	<p><b>Pink K Women's Plus Notch Collar Bandana Print Duster with Lace</b></p> <p><del>\$11.99</del> <b>\$11.98</b></p> <p><a href="#">Details Page</a></p> <p><input type="checkbox"/> Add to Compare</p> <p><input checked="" type="checkbox"/> Ship Vantage Eligible</p> <p><b>GO</b> <input type="checkbox"/> Unavailable at 6411 Riggs Road ( 20783 )</p> <p><a href="#">Check other stores</a></p>

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**To:** XP Innovation, LLC ([inteas@bakerd.com](mailto:inteas@bakerd.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 85322915 - JUST RACE - XPI-T0030e  
**Sent:** 9/5/2011 11:17:17 PM  
**Sent As:** ECOM102@USPTO.GOV  
**Attachments:**

**IMPORTANT NOTICE REGARDING YOUR  
U.S. TRADEMARK APPLICATION**

**USPTO OFFICE ACTION HAS ISSUED ON 9/5/2011 FOR  
SERIAL NO. 85322915**

Please follow the instructions below to continue the prosecution of your application:

**TO READ OFFICE ACTION:** Click on this [link](#) or go to <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to access the Office action.

**PLEASE NOTE:** The Office action may not be immediately available but will be viewable within 24 hours of this e-mail notification.

**RESPONSE IS REQUIRED:** You should carefully review the Office action to determine (1) how to respond; and (2) the applicable response time period. Your response deadline will be calculated from 9/5/2011 (or sooner if specified in the office action).

**Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System Response Form.**

**HELP:** For *technical* assistance in accessing the Office action, please e-mail [TDR@uspto.gov](mailto:TDR@uspto.gov). Please contact the assigned examining attorney with questions about the Office action.

**WARNING**

**Failure to file the required response by the applicable deadline will result in the ABANDONMENT of your application.**

**Exhibit 3**

## Trademark/Service Mark Application, Principal Register

Serial Number: 85322913

Filing Date: 05/17/2011

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	85322913
<b>MARK INFORMATION</b>	
<b>*MARK</b>	<u>JUST RACE!</u>
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>LITERAL ELEMENT</b>	JUST RACE!
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
<b>*OWNER OF MARK</b>	XP Innovation, LLC
<b>DBA/AKA/TA/Formerly</b>	DBA Dan's Comp
<b>*STREET</b>	1 Competition Way
<b>*CITY</b>	Mt. Vernon
<b>*STATE (Required for U.S. applicants)</b>	Indiana
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE (Required for U.S. applicants only)</b>	47620
<b>LEGAL ENTITY INFORMATION</b>	
<b>TYPE</b>	limited liability company
<b>STATE/COUNTRY WHERE LEGALLY ORGANIZED</b>	Indiana
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	

<b>INTERNATIONAL CLASS</b>	018
<b>*IDENTIFICATION</b>	Backpacks, sports bags, and wallets
<b>FILING BASIS</b>	SECTION 1(b)
<b>INTERNATIONAL CLASS</b>	022
<b>*IDENTIFICATION</b>	Lanyards
<b>FILING BASIS</b>	SECTION 1(b)
<b>INTERNATIONAL CLASS</b>	025
<b>*IDENTIFICATION</b>	Shirts, bandanas, hats, socks
<b>FILING BASIS</b>	SECTION 1(b)
<b>INTERNATIONAL CLASS</b>	035
<b>*IDENTIFICATION</b>	Mail order services featuring bicycles and bicycle parts
<b>FILING BASIS</b>	SECTION 1(b)
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Louis T. Perry
<b>ATTORNEY DOCKET NUMBER</b>	XPI-T0029e
<b>FIRM NAME</b>	Baker & Daniels LLP
<b>INTERNAL ADDRESS</b>	Suite 2700
<b>STREET</b>	300 North Meridian Street
<b>CITY</b>	Indianapolis
<b>STATE</b>	Indiana
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	46204
<b>PHONE</b>	(317) 237-0300
<b>FAX</b>	(317) 237-1000
<b>EMAIL ADDRESS</b>	intead@bakerd.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>OTHER APPOINTED ATTORNEY</b>	Jonathan C. Anderson, Ryan C. Barker, Michelle Kaiser Bray, Jonathan B. Burns, Amie Peele Carter, Marcelo S. Copat, Adam F. Cox, Jamie M. Drewry, John J. Emanuele, Kevin R. Erdman, Eric J. Groen, Stephanie A. Gumm, Norman J. Hedges, Jennett M.

	Hill, John F. Hoffman, David P. Irmscher, Brad R. Maurer, William S. Meyers, Timothy E. Niednagel, Robert D. Null, Jay M. Sanders, James J. Saul, Michael D. Schwartz, Daniel Tychonievich, and Douglas A. Yerkeson of Baker & Daniels LLP
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	Louis T. Perry
<b>FIRM NAME</b>	Baker & Daniels LLP
<b>INTERNAL ADDRESS</b>	Suite 2700
<b>STREET</b>	300 North Meridian Street
<b>CITY</b>	Indianapolis
<b>STATE</b>	Indiana
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	46204
<b>PHONE</b>	(317) 237-0300
<b>FAX</b>	(317) 237-1000
<b>EMAIL ADDRESS</b>	intecas@bakerd.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	4
<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	1300
<b>*TOTAL FEE PAID</b>	1300 .
<b>SIGNATURE INFORMATION</b>	
<b>SIGNATURE</b>	/Louis T. Perry/
<b>SIGNATORY'S NAME</b>	Louis T. Perry
<b>SIGNATORY'S POSITION</b>	attorney of record, Indiana bar member
<b>DATE SIGNED</b>	05/17/2011

## Trademark/Service Mark Application, Principal Register

**Serial Number: 85322913**

**Filing Date: 05/17/2011**

### To the Commissioner for Trademarks:

**MARK: JUST RACE!** (Standard Characters, see mark)

The literal element of the mark consists of JUST RACE!.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, XP Innovation, LLC, DBA Dan's Comp, a limited liability company legally organized under the laws of Indiana, having an address of

1 Competition Way

Mt. Vernon, Indiana 47620

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 018: Backpacks, sports bags, and wallets

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 022: Lanyards

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 025: Shirts, bandanas, hats, socks

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 035: Mail order services featuring bicycles and bicycle parts

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Attorney Information:

Louis T. Perry and Jonathan C. Anderson, Ryan C. Barker, Michelle Kaiser Bray, Jonathan B. Burns, Amie Peele Carter, Marcelo S. Copat, Adam F. Cox, Jamie M. Drewry, John J. Emanuele, Kevin R. Erdman, Eric J. Groen, Stephanie A. Gumm, Norman J. Hedges, Jennett M. Hill, John F. Hoffman, David

P. Irmscher, Brad R. Maurer, William S. Meyers, Timothy E. Niednagel, Robert D. Null, Jay M. Sanders, James J. Saul, Michael D. Schwartz, Daniel Tychonievich, and Douglas A. Yerkeson of Baker & Daniels LLP of Baker & Daniels LLP

Suite 2700  
300 North Meridian Street  
Indianapolis, Indiana 46204  
United States

The attorney docket/reference number is XPI-T0029e.

The applicant's current Correspondence Information:

Louis T. Perry  
Baker & Daniels LLP  
Suite 2700  
300 North Meridian Street  
Indianapolis, Indiana 46204  
(317) 237-0300(phone)  
(317) 237-1000(fax)  
inteas@bakerd.com (authorized)

A fee payment in the amount of \$1300 has been submitted with the application, representing payment for 4 class(es).

#### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Louis T. Perry/ Date Signed: 05/17/2011  
Signatory's Name: Louis T. Perry  
Signatory's Position: attorney of record, Indiana bar member

RAM Sale Number: 1223  
RAM Accounting Date: 05/18/2011

Serial Number: 85322913  
Internet Transmission Date: Tue May 17 14:56:42 EDT 2011

TEAS Stamp: USPTO/BAS-174.46.163.5-20110517145642755

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dc2b114-DA-1223-20110517143734037079

**JUST RACE!**

**Exhibit 4**

**To:** XP Innovation, LLC ([inteas@bakerd.com](mailto:inteas@bakerd.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 85322913 - JUST RACE! - XPI-T0029e  
**Sent:** 9/5/2011 11:15:19 PM  
**Sent As:** ECOM102@USPTO.GOV  
**Attachments:** [Attachment - 1](#)  
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[Attachment - 7](#)  
[Attachment - 8](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**APPLICATION SERIAL NO.** 85322913

**MARK:** JUST RACE!

**\*85322913\***

**CORRESPONDENT ADDRESS:**

LOUIS T. PERRY  
BAKER & DANIELS LLP  
300 N MERIDIAN ST STE 2700  
INDIANAPOLIS, IN 46204-1782

**CLICK HERE TO RESPOND TO THIS LETTER:**  
[http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp)

**APPLICANT:** XP Innovation, LLC

**CORRESPONDENT'S REFERENCE/DOCKET  
NO:**

XPI-T0029e

**CORRESPONDENT E-MAIL ADDRESS:**

[inteas@bakerd.com](mailto:inteas@bakerd.com)

**OFFICE ACTION**

**STRICT DEADLINE TO RESPOND TO THIS LETTER**

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

**ISSUE/MAILING DATE:** 9/5/2011

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

**SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION AS TO CLASS 025 ONLY**

Registration of the applied-for mark is refused, as to class 025 only, because of a likelihood of confusion with the mark in U.S. Registration No. 3503676. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 *et seq.* See the enclosed registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. See 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). See TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. See *In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

The applicant's mark is JUST RACE! in standard characters for "Shirts, bandanas, hats, socks" in International Class 025. The registrant's mark is JUST RACING in standard characters for "Clothing, namely, T-shirts, pants, shorts, hats, jackets, socks, shoes, gloves, head wear, and suspenders."

**Marks are Similar**

The marks are similar because they share the wording JUST and variations of the term RACE. Here, the different tenses of the term RACE do not alter the commercial impression of the marks because the meanings remain similar.

**Goods Are Related**

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. See *Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient that the goods and/or services are related in some manner and/or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); see, e.g., *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

The applicant's and the registrant's goods are identical clothing items that likely to travel through the same channels of trade to the same classes of purchasers. For example, both would likely be sold at clothing and department stores. See attached Internet website evidence showing the goods of the parties

sold through the same types of stores. Accordingly, because confusion as to source is likely, registration is refused, as to class 025, under Trademark Act Section 2(d) based on a likelihood of confusion.

Any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); see *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

### **IDENTIFICATION OF GOODS**

Descriptions of goods and services should use the common, ordinary name for the goods and/or services. TMEP §1402.01. If there is no common, ordinary name for the goods and/or services, applicant should describe the goods and/or services using wording that would be generally understood by the average person. See *Cal. Spray-Chem. Corp. v. Osmose Wood Pres. Co. of Am.*, 102 USPQ 321, 322 (Comm'r Pats. 1954); *Schenley Indus., Inc. v. Battistoni*, 112 USPQ 485, 486 (Comm'r Pats. 1957); TMEP §1402.01.

An in depth knowledge of the relevant field should not be necessary for understanding a description of the goods and/or services. TMEP §1402.01. "[T]echnical, high-sounding verbiage" should be avoided. *Cal. Spray-Chem.*, 102 USPQ at 322.

The Office requires a degree of particularity necessary to identify clearly goods and/or services covered by a mark. See *In re Omega SA*, 494 F.3d 1362, 1365, 83 USPQ2d 1541, 1543-44 (Fed. Cir. 2007). Descriptions of goods and services in applications must be specific, explicit, clear and concise. TMEP §1402.01; see *Cal. Spray-Chem. Corp. v. Osmose Wood Pres. Co. of Am.*, 102 USPQ 321, 322 (Comm'r Pats. 1954); *In re Cardinal Labs., Inc.*, 149 USPQ 709, 711 (TTAB 1966).

The identification of goods is indefinite and must be clarified because the wording "lanyards" require further clarification. See TMEP §1402.01. Applicant may adopt the following identification, if accurate:

Lanyards for holding {indicate use, e.g., eyeglasses, badges, keys}, in International Class 022.

Identifications of goods can be amended only to clarify or limit the goods; adding to or broadening the scope of the goods is not permitted. 37 C.F.R. §2.71(a); see TMEP §§1402.06 *et seq.*, 1402.07. Therefore, applicant may not amend the identification to include goods that are not within the scope of the goods set forth in the present identification.

For assistance with identifying and classifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netahtml/tidm.html>. See TMEP §1402.04.

### **RESPONSES**

For this application to proceed toward registration, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may

also have other options for responding to a refusal and should consider such options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements.

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end, the trademark will fail to register, and the application fee will not be refunded. See 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a), 2.209(a); TMEP §§405.04, 718.01, 718.02. Where the application has been abandoned for failure to respond to an Office action, applicant's only option would be to file a timely petition to revive the application, which, if granted, would allow the application to return to live status. See 37 C.F.R. §2.66; TMEP §1714. There is a \$100 fee for such petitions. See 37 C.F.R. §§2.6, 2.66(b)(1).

Applicant is encouraged to email ([cheryl.clayton@uspto.gov](mailto:cheryl.clayton@uspto.gov)) the assigned trademark examining attorney to resolve the issues raised in this Office action.

To expedite prosecution of the application, applicant is encouraged to file its response to this Office action online via the Trademark Electronic Application System (TEAS), which is available at <http://www.uspto.gov/teas/index.html>. If applicant has technical questions about the TEAS response to Office action form, applicant can review the electronic filing tips available online at <http://www.uspto.gov/teas/eFilingTips.htm> and email technical questions to [TEAS@uspto.gov](mailto:TEAS@uspto.gov).

Cheryl Clayton  
/CAC/  
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**All informal e-mail communications relevant to this application will be placed in the official application record.**

**WHO MUST SIGN THE RESPONSE:** It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-

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**Print: Sep 2, 2011**

**77197500**

**DESIGN MARK**

**Serial Number**  
77197500

**Status**  
REGISTERED

**Word Mark**  
JUST RACING

**Standard Character Mark**  
Yes

**Registration Number**  
3503676

**Date Registered**  
2008/09/23

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(4) STANDARD CHARACTER MARK

**Owner**  
Just Racing, Ltd CORPORATION MINNESOTA 4 Wishbone Lane North Oaks  
MINNESOTA 55127

**Goods/Services**  
Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing,  
namely, T-shirts, pants, shorts, hats, jackets, socks, shoes, gloves,  
head wear, and suspenders. First Use: 2007/01/15. First Use In  
Commerce: 2007/01/15.

**Filing Date**  
2007/06/05

**Examining Attorney**  
VASQUEZ, JENNIFER

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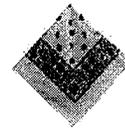
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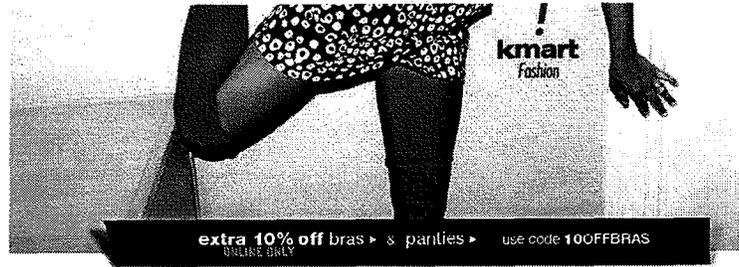
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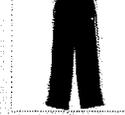
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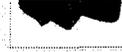
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