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Filing date: **04/09/2014**

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

Proceeding	92054855
Party	Defendant Fashion Exchange, LLC
Correspondence Address	MORRIS FETEHA LAW OFFICE OF MORRIS FATEHA PC 911 AVENUE U BROOKLYN, NY 11223 UNITED STATES morrisfateha@gmail.com
Submission	Motion to Suspend for Civil Action
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Signature	/Scott Zarin/
Date	04/09/2014
Attachments	Fashion Exchange Motion to Suspend -- Part 1.pdf(1722908 bytes ) Fashion Exchange Motion to Suspend -- Part 2.pdf(4442519 bytes ) Fashion Exchange Motion to Suspend -- Part 3.pdf(5424556 bytes ) Fashion Exchange Motion to Suspend -- Part 4.pdf(3317995 bytes ) Fashion Exchange Motion to Suspend -- Part 5.pdf(3864111 bytes ) Fashion Exchange Motion to Suspend -- Part 6.pdf(3499400 bytes ) Fashion Exchange Motion to Suspend -- Part 7.pdf(5421040 bytes ) Fashion Exchange Motion to Suspend -- Part 8.pdf(3158717 bytes )



*Black Box Corporation of Pennsylvania and BB Technologies, Inc. v. Better Box Communications Ltd.*, 2002 TTAB LEXIS 253 at \*4 (TTAB 2002).

In the instant cancellation proceeding, Petitioner seeks to cancel Respondent's trademark registration for the mark HYBRID & COMPANY, Registration No. 3,723,220. On February 26, 2014, Respondent filed an action in United States District Court for the Southern District of New York, *The Fashion Exchange LLC v. Hybrid Promotions, LLC, et. al.*, case no. 14-1254, against Petitioner, *inter alia*, for a declaration of ownership of the trademark HYBRID & COMPANY, trademark infringement, federal and New York state law unfair competition and deceptive trade practices. (See Exhibit)

All of Respondent's claims in the federal action have a direct bearing on the issues currently before the Board in this action. In particular, in its declaration of ownership claim, Respondent requests the federal court to address precisely the same question at issue before the Board; that is, Respondent's ownership of the trademark HYBRID & COMPANY. Under Trademark Rule 2.117(a), therefore, the Board should suspend the instant cancellation proceeding pending resolution of the pending federal action. See e.g. *Society of Mexican American Engineers and Scientists, Inc. v. GVR Public Relations*, 2002 U.S. TTAB LEXIS 697 at \*11 (TTAB 2002) ("Further, because the issues under consideration in the civil action include trademark infringement; false designation of origin; and dilution, all with regard to opposer's asserted MAES marks, the decision in the civil case may include a determination of opposer's right thereto. Any such determination of opposer's rights to its asserted mark in the civil action will have a bearing on the issues before the Board.")

For all the foregoing reasons, the Board should suspend the instant cancellation proceeding pending resolution of the federal action currently pending before United States District Court for the Southern District of New York.

Respectfully submitted,



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Dated: April 9, 2014

Attorneys for Respondent  
Fashion Exchange, LLC

Certificate of Service

I, Scott Zarin, declare, under penalty of perjury, that on April 9, 2014 I caused to be served, via e-mail and First Class U.S. Mail, in *Hybrid Promotions, LLC v. Fashion Exchange, LLC*, TTAB Cancellation No. 92054855:

**Respondent's Motion to Suspend Pursuant to Trademark Rule 2.117(a)**

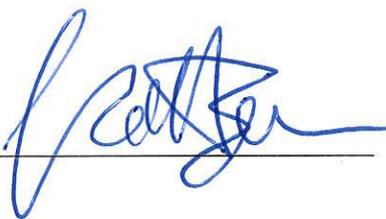
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Dated: \_\_\_\_\_

4/9/14



\_\_\_\_\_

# Exhibit

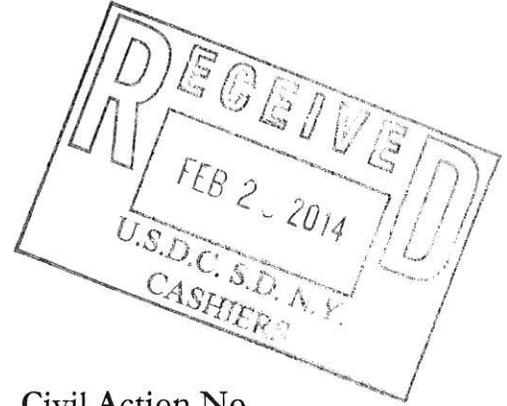
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE FASHION EXCHANGE LLC,

Plaintiff,

v.

HYBRID PROMOTIONS, LLC,  
JARROD DOGAN, GAVIN DOGAN,  
JIMMY JAZZ, INC., FOOT LOCKER, INC.,  
NATIONAL STORES, INC.,  
FOREVER 21 RETAIL, INC.,  
HOT TOPIC, INC., GAP (APPAREL), LLC,  
WORLD OF JEANS & TOPS,  
PACIFIC SUNWEAR OF CALIFORNIA, INC.,  
COSTCO WHOLESALE MEMBERSHIP, INC.,  
SPORT CHALET, INC., ROSS STORES, INC.,  
BIG 5 SPORTING GOODS CORPORATION,  
THE SPORTS AUTHORITY, INC.,  
TWEEN BRANDS, INC.,  
THE TJX COMPANIES, INC.,  
THE WET SEAL RETAIL, INC.,  
SPENCER GIFTS LLC,  
OLD NAVY, LLC, RUE21, INC.,  
LORD & TAYLOR HOLDINGS LLC,  
J.C. PENNEY CORPORATION, INC.,  
BJ'S WHOLESALE CLUB, INC.,  
BOSCOV'S DEPARTMENT STORE, LLC,  
WAL-MART STORES, INC.,  
DICK'S SPORTING GOODS, INC.,  
KOHL'S DEPARTMENT STORES, INC.  
MACY'S MERCHANDISING GROUP, INC.,  
POPSUGAR, INC., SHOPKO STORES  
OPERATING CO., LLC,  
FAMILY DOLLAR SERVICES, INC.,  
THE CATO CORPORATION,  
BELK STORES SERVICES, INC.,  
DILLARD INTERNATIONAL, INC.,  
SPORTS HOLDINGS, INC., ZUMIEZ, INC.,  
NORDSTROM, INC., BDSRCO, INC.,



Civil Action No. \_\_\_\_\_

**COMPLAINT FOR  
DAMAGES, INJUNCTIVE  
AND DECLARATORY  
RELIEF**

**JURY TRIAL DEMAND**

SEARS BRANDS, LLC, BLOOMINGDALE’S, INC., :  
MARSHALLS OF MA, INC., BOB’S STORES, LLC, :  
DOLLAR GENERAL CORPORATION, :  
TARGET CORPORATE SERVICES, INC., :  
THE FINISH LINE, INC., :  
URBAN OUTFITTERS, INC., :  
: :  
Defendants. :  
: :  
-----X

Plaintiff The Fashion Exchange LLC (“Plaintiff”), by and through its undersigned attorneys, Zarin & Associates P.C. and Simon Gluck & Kane LLP, for its Complaint against Defendants Hybrid Promotions, LLC (“Hybrid Promotions”), Jarrod Dogan, Jeff Caldwell, Gavin Dogan, Jimmy Jazz, Inc., Foot Locker, Inc. (d/b/a Foot Locker and Lady Foot Locker), National Stores, Inc., Forever 21 Retail, Inc., Hot Topic, Inc., Gap (Apparel), LLC, World Jeans & Tops (d/b/a Tilly’s), Pacific Sunwear of California, Inc. (d/b/a Pacsun), Costco Wholesale Membership, Inc., Sport Chalet, Inc., Ross Stores, Inc., Big 5 Sporting Goods Corporation, The Sports Authority, Inc., Tween Brands, Inc. (d/b/a Justice), The TJX Companies, Inc. (d/b/a T·J·Maxx), The Wet Seal Retail, Inc., Spencer Gifts LLC, Old Navy, LLC, Rue21, Inc., Lord & Taylor Holdings LLC, J.C. Penney Corporation, Inc., BJ’s Wholesale Club, Inc., Boscov’s Department Store, LLC, Wal-Mart Stores, Inc. (d/b/a Walmart and Sam’s Club), Dick’s Sporting Goods, Inc., Kohl’s Department Stores, Inc., Macy’s Merchandising Group, Inc., Popsugar, Inc. (d/b/a Shopstyle.com), Shopko Stores Operating Co., LLC, Family Dollar Services, Inc., The Cato Corporation, Belk Stores Services, Inc., Dillard International, Inc., Sports Holdings, Inc. (d/b/a Hibbett Sports), Zumiez, Inc., Nordstrom, Inc., BDSRCO, Inc. (d/b/a Bealls and Stage), Sears Brands, LLC (d/b/a Sears and K-Mart), Bloomingdale’s,

Inc., Marshalls of MA, Inc., Bob's Stores, LLC, Dollar General Corporation, Target Corporate Services, Inc., The Finish Line, Inc., and Urban Outfitters, Inc. (collectively "Defendants"), alleges as follows:

### **NATURE OF THE ACTION**

1. This is an action for trademark infringement, unfair competition and deceptive and unfair trade practices, under the Lanham Act and New York state law, and for a declaration of trademark ownership, under the Declaratory Judgment Act.

2. Plaintiff's trademark infringement, unfair competition and deceptive and unfair trade practices claims stem from Defendants' use of the trademark HYBRID on the same goods, clothing, as Plaintiff uses its trademark HYBRID & COMPANY. On these claims, Plaintiff seeks injunctive relief as well as monetary damages, including but not limited to compensatory and punitive damages.

3. Plaintiff's declaration of trademark ownership claim stems from Defendant Hybrid Promotions' effort to obtain cancellation of Plaintiff's trademark registration, Registration No. 3,723,220, for the trademark HYBRID & COMPANY. As relief for this claim, Plaintiff seeks a declaration that its trademark registration for the mark HYBRID & COMPANY is valid and enforceable.

### **THE PARTIES**

4. Plaintiff The Fashion Exchange LLC is a limited liability company organized and existing under the laws of the State of New York, with a principal place of business at 1407 Broadway, Suite 1706, New York, New York 10018.

5. Upon information and belief, Defendant Hybrid Promotions LLC is a limited liability company organized and existing under the laws of the State of California, with a principal place of business at 10711 Walker Street, Cypress, California 90630.

6. Upon information and belief, Defendant Jarrod Dogan is a citizen of California, the Chief Executive Officer and a co-founder of Hybrid Promotions LLC, and maintains a residence at 706 24<sup>th</sup> Place, Hermosa Beach, California 90254.

7. Upon information and belief, Defendant Jeff Caldwell is a citizen of California, the Executive Vice President and a co-founder of Hybrid Promotions LLC, and maintains a place of business at 10711 Walker Street, Cypress, California 90630.

8. Upon information and belief, Defendant Gavin Dogan is a citizen of California, the Chief Marketing Officer of Hybrid Promotions LLC, and maintains a residence at 3010 Grayson Avenue, Venice, California 90291.

9. Upon information and belief, Defendant Jimmy Jazz, Inc. is a corporation organized and existing under the laws of the State of New York, with a place of business at 85 Metro Way, Secaucus, New Jersey 07094.

10. Upon information and belief, Defendant Foot Locker, Inc. is a corporation organized and existing under the laws of the State of New York, with a principal place of business at 112 West 34<sup>th</sup> Street, New York, New York 10120.

11. Upon information and belief, Defendant National Stores, Inc. is a corporation organized and existing under the laws of the State of California, with a place of business at 15001 South Figueroa Street, Gardena, California 90248.

12. Upon information and belief, Defendant Forever 21 Retail, Inc. is a corporation organized and existing under the laws of the State of California, with a place of business at 2001 South Alameda Street, Los Angeles, California 90058.

13. Upon information and belief, Defendant Hot Topic, Inc. is a corporation organized and existing under the laws of the State of California, with a place of business at 18305 East San Jose Avenue, City of Industry, California 91748.

14. Upon information and belief, Defendant Gap (Apparel), LLC is a limited liability company organized and existing under the laws of the State of California, with a place of business at Two Folsom Street, San Francisco, California 94105.

15. Upon information and belief, Defendant World of Jeans & Tops is a corporation organized and existing under the laws of the State of California, with a place of business at 10 Whatney, Irvine, California 92618.

16. Upon information and belief, Defendant Pacific Sunwear of California, Inc. is a corporation organized and existing under the laws of the State of California, with a place of business at 3450 East Miraloma Avenue, Anaheim, California 92806.

17. Upon information and belief, Defendant Costco Wholesale Membership, Inc. is a corporation organized and existing under the laws of the State of California, with a place of business at 999 Lake Drive, Issaquah, Washington 98027.

18. Upon information and belief, Defendant Sport Chalet, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at One Sport Chalet, La Canada, California 91011.

19. Upon information and belief, Defendant Ross Stores, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 5130 Hacienda Drive, Dublin, California 94568.

20. Upon information and belief, Defendant Big 5 Sporting Goods Corporation is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 2525 East El Segundo Blvd., El Segundo, California 90245.

21. Upon information and belief, Defendant The Sports Authority, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1050 West Hampden Avenue, Englewood, Colorado 80110.

22. Upon information and belief, Defendant Tween Brands, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 8323 Walton Parkway, New Albany, New York 43054.

23. Upon information and belief, Defendant The TJX Companies, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 770 Cochituate Road, Framingham, Massachusetts 01701.

24. Upon information and belief, Defendant The Wet Seal Retail, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 26972 Burbank, Foothill Ranch, California 92610.

25. Upon information and belief, Defendant Spencer Gifts LLC is a limited liability company organized and existing under the laws of the State of Delaware, with a place of business at 6826 Black Horse Pike, Egg Harbor Township, New Jersey 08234.

26. Upon information and belief, Defendant Old Navy, LLC is a limited liability company organized and existing under the laws of the State of Delaware, with a place of business at Two Folsom Street, San Francisco, California 94105.

27. Upon information and belief, Defendant Rue21, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 800 Commonwealth Drive, Warrendale, Pennsylvania 15086.

28. Upon information and belief, Defendant Lord & Taylor Holdings LLC is a limited liability company organized and existing under the laws of the State of Delaware, with a place of business at 424 Fifth Avenue, New York, New York 10018.

29. Upon information and belief, Defendant J.C. Penney Corporation, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 650 Legacy Drive, Plano, Texas 75024.

30. Upon information and belief, Defendant BJ's Wholesale Club, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 25 Research Drive, Westborough, Massachusetts 01581.

31. Upon information and belief, Defendant Boscov's Department Store, LLC is a limited liability company organized and existing under the laws of the State of Delaware, with a place of business at 4500 Perkimen Avenue, Reading, Pennsylvania 19606.

32. Upon information and belief, Defendant Wal-Mart Stores, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 702 SW 8<sup>th</sup> Street, Bentonville, Arkansas 72716.

33. Upon information and belief, Defendant Dick's Sporting Goods, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 345 Court Street, Coraopolis, Pennsylvania 15108.

34. Upon information and belief, Defendant Kohl's Department Stores, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at N56W 170000 Ridgewood Drive, Menomonee Falls, Wisconsin 05351.

35. Upon information and belief, Defendant Macy's Merchandising Group, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 7 West Seventh Street, Cincinnati, Ohio 12207.

36. Upon information and belief, Defendant Popsugar, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 111 Sutter Street, San Francisco, California 94104.

37. Upon information and belief, Defendant Shopko Stores Operating Co., LLC is a limited liability company organized and existing under the laws of the State of Delaware, with a place of business at 700 Pilgrim Way, Green Bay, Wisconsin 54307.

38. Upon information and belief, Defendant Family Dollar Services, Inc. is a corporation organized and existing under the laws of the State of North Carolina, with a place of business at 10401 Monroe Road, Matthews, North Carolina 28105.

39. Upon information and belief, Defendant The Cato Corporation is a corporation organized and existing under the laws of the State of North Carolina, with a place of business at 8100 Denmark Road, Charlotte, North Carolina 28273.

40. Upon information and belief, Defendant Belk Stores Services, Inc. is a corporation organized and existing under the laws of the State of North Carolina, with a place of business at 450 Seventh Avenue, New York, New York 10123.

41. Upon information and belief, Defendant Dillard International, Inc. is a corporation organized and existing under the laws of the State of Nevada, with a place of business at 1600 Cantrell Road, Little Rock, Arkansas 72201.

42. Upon information and belief, Defendant Sports Holdings, Inc. is a corporation organized and existing under the laws of the State of Nevada, with a place of business at 2520 St. Rose Parkway, Henderson, Nevada 89074.

43. Upon information and belief, Defendant Zumiez, Inc. is a corporation organized and existing under the laws of the State of Washington, with a place of business at 4001 204<sup>th</sup> Street SW, Lynnwood, Washington 98036.

44. Upon information and belief, Defendant Nordstrom, Inc. is a corporation organized and existing under the laws of the State of Washington, with a place of business at 1700 Seventh Avenue, Seattle, Washington 98101.

45. Upon information and belief, Defendant BDSRSCO, Inc. is a corporation organized and existing under the laws of the State of Florida, with a place of business at 1806 38<sup>th</sup> Avenue East, Bradenton, Florida 34208.

46. Upon information and belief, Defendant Sears Brands, LLC is a limited liability company organized and existing under the laws of the State of Illinois, with a place of business at 3333 Beverly Road, Hoffman Estates, Illinois 60179.

47. Upon information and belief, Defendant Bloomingdale's, Inc. is a corporation organized and existing under the laws of the State of Ohio, with a place of business at 7 West Seventh Street, Cincinnati, Ohio 45202.

48. Upon information and belief, Defendant Marshalls of MA, Inc. is a corporation organized and existing under the laws of the State of Massachusetts, with a place of business at 770 Cochituate Road, Framingham, Massachusetts 01701.

49. Upon information and belief, Defendant Bob's Stores, LLC is a limited liability company organized and existing under the laws of the State of New Hampshire, with a place of business at 160 Corporate Court, Meriden, Connecticut 06450.

50. Upon information and belief, Defendant Dollar General Corporation is a corporation organized and existing under the laws of the State of Tennessee, with a place of business at 100 Mission Ridge, Goodlettsville, Tennessee 37072.

51. Upon information and belief, Defendant Target Corporate Services, Inc. is a corporation organized and existing under the laws of the State of Minnesota, with a place of business at 1000 Nicollet Mall, Minneapolis, Minnesota 55403.

52. Upon information and belief, Defendant The Finish Line, Inc. is a corporation organized and existing under the laws of the State of Indiana, with a place of business at 3308 North Mitthoeffer Road, Indianapolis, Indiana 46235.

53. Upon information and belief, Defendant Urban Outfitters, Inc. is a corporation organized and existing under the laws of the State of Pennsylvania, with a place of business at 5000 South Broad Street, Philadelphia, Pennsylvania 19112.

## JURISDICTION AND VENUE

54. This Court has subject matter jurisdiction over the federal claims in this action pursuant to 15 U.S.C. §1121 of the Lanham Act and 28 U.S.C. §§1331, 1338(a) and 1338(b). The Court has supplemental subject matter jurisdiction over the New York state law claims in this action pursuant to 28 U.S.C. §1367(a).

55. This Court has personal jurisdiction over Defendants pursuant to New York Civil Practice Law and Rules, §§301 and 302(a), because, upon information and belief: (i) Defendants transact business in New York and contract to supply goods or services in New York; (ii) Defendants have committed acts outside of New York which have caused injury to Plaintiff in New York; and/or (iii) Defendants regularly conduct or solicit business in New York and/or derive substantial revenue from the sale of goods or services in New York.

56. Venue is proper in this district pursuant to 28 U.S.C. §1391(b), because, upon information and belief, Defendants are subject to personal jurisdiction in this district, a substantial part of the events which give rise to this action have occurred in this district, and Plaintiff has suffered harm from Defendants' conduct in this district.

### FACTS COMMON TO ALL CAUSES OF ACTION

#### A. Plaintiff's Establishment and Registration of HYBRID & COMPANY Trademark

57. In or around 1997, Young Girl, Inc. ("Young Girl") began to sell, offer for sale, market, promote, advertise, distribute and manufacture a wide array of clothing items, including but not limited to coats, jackets, dresses, sweaters, shirts, bathing suits, belts and footwear,

displaying the trademark HYBRID & COMPANY. Through this use in commerce, Young Girl established common law rights in the trademark HYBRID & COMPANY.

58. In or around 1998, Young Girl transferred its common law rights in the trademark HYBRID & COMPANY to YG Designs, Inc. (“YG Designs”).

59. Beginning in or around 1998, YG Designs sold, offered for sale, marketed, promoted, advertised, distributed and manufactured a wide array of clothing items, including but not limited to coats, jackets, dresses, sweaters, shirts, bathing suits, belts and footwear, displaying the trademark HYBRID & COMPANY.

60. In or around 2002, YG Designs transferred its common law rights in the trademark HYBRID & COMPANY to U.S.A. Design, Inc. (“USA Design”).

61. Beginning in or around 2002, USA Design sold, offered for sale, marketed, promoted, advertised, distributed and manufactured a wide array of clothing items, including but not limited to coats, jackets, dresses, sweaters, shirts, bathing suits, belts and footwear, displaying the trademark HYBRID & COMPANY.

62. In or around 2006, USA Design transferred its common law rights in the trademark HYBRID & COMPANY to Plaintiff.

63. In or around 2006, Plaintiff began to sell, offer for sale, market, promote, advertise, distribute and manufacture a wide array of clothing items, including but not limited to coats, jackets, dresses, sweaters, shirts, bathing suits, belts and footwear, displaying the trademark HYBRID & COMPANY.

64. Young Girl, YG Designs and USA Design are the predecessors-in-interest of Plaintiff. Plaintiff and its predecessors-in-interest are privately held entities with common ownership.

65. Through its predecessors-in-interest, Young Girl, YG Designs and USA Design, Plaintiff has been selling, offering for sale, marketing, promoting, advertising, distributing and manufacturing clothing items, including but not limited to coats, jackets, dresses, sweaters, shirts, bathing suits, belts and footwear, displaying the trademark HYBRID & COMPANY since at least as early as 1997.

66. Since in or around 1997, Plaintiff and its predecessors-in-interest have invested a substantial amount of time, effort and money to develop and promote their clothing under the trademark HYBRID & COMPANY. As a result of these efforts, the trademark HYBRID & COMPANY has achieved substantial goodwill and success in the marketplace for clothing and consumers throughout the United States have come to associate this trademark with high quality clothing sold by Plaintiff.

67. In June 2008, Plaintiff filed an application with the U.S. Patent and Trademark Office (USPTO) seeking a federal registration for the trademark HYBRID & COMPANY, in International Class 25, for use in association with clothing, including but not limited to coats, jackets, dresses, sweaters, shirts, bathing suits, belts and footwear.

68. In or around December 2009, the USPTO granted Plaintiff's application and issued it a trademark registration, Registration No. 3,723,220, for the words and design mark HYBRID & COMPANY for use in association with clothing, including but not limited to coats, jackets, dresses, sweaters, shirts, bathing suits, belts and footwear. (Exh. A)

## **B. Hybrid Promotions' Adoption and Defendants' Use of HYBRID Trademark**

69. Upon information and belief, sometime after Plaintiff's predecessors-in-interest first established common law rights in the trademark HYBRID & COMPANY, Hybrid Promotions adopted the trademark HYBRID and began to sell, market, promote, advertise, distribute, produce and manufacture clothing, including but not limited to tank tops, t-shirts and sweatshirts, under this trademark.

70. Upon information and belief, Hybrid Promotions began to sell, market, promote, advertise, distribute, produce and manufacture clothing displaying the trademark HYBRID with full knowledge that Plaintiff's predecessors-in-interest were selling clothing under the trademark HYBRID & COMPANY and therefore had established common law rights in this trademark, and with the intent to capitalize on the goodwill Plaintiff's predecessors-in-interest had established in this trademark.

71. Upon information and belief, Jarrod Dogan, Hybrid Promotions' CEO, Jeff Caldwell, Hybrid Promotions' Executive Vice President, and Gavin Dogan, Hybrid Promotions' Chief Marketing Officer, have actively participated in selling, marketing, promoting, advertising, distributing, producing and manufacturing clothing displaying the trademark HYBRID and have done so with full knowledge that Plaintiff's predecessors-in-interest were using the trademark HYBRID & COMPANY on their goods and therefore had established common law rights in this trademark.

72. Upon information and belief, sometime after Plaintiff's predecessors-in-interest first established common law rights in the trademark HYBRID & COMPANY, Defendants Jimmy Jazz, Inc., Foot Locker, Inc. (d/b/a Foot Locker and Lady Foot Locker), National

Stores, Inc., Forever 21 Retail, Inc., Hot Topic, Inc., Gap (Apparel), LLC, World Jeans & Tops (d/b/a Tilly's), Pacific Sunwear of California, Inc. (d/b/a Pacsun), Costco Wholesale Membership, Inc., Sport Chalet, Inc., Ross Stores, Inc., Big 5 Sporting Goods Corporation, The Sports Authority, Inc., Tween Brands, Inc. (d/b/a Justice), The TJX Companies, Inc. (d/b/a T·J·Maxx), The Wet Seal Retail, Inc., Spencer Gifts LLC, Old Navy, LLC, Rue21, Inc., Lord & Taylor Holdings LLC, J.C. Penney Corporation, Inc., BJ's Wholesale Club, Inc., Boscov's Department Store, LLC, Wal-Mart Stores, Inc. (d/b/a Walmart and Sam's Club), Dick's Sporting Goods, Inc., Kohl's Department Stores, Inc., Macy's Merchandising Group, Inc., Popsugar, Inc. (d/b/a Shopstyle.com), Shopko Stores Operating Co., LLC, Family Dollar Services, Inc., The Cato Corporation, Belk Stores Services, Inc., Dillard International, Inc., Sports Holdings, Inc. (d/b/a Hibbett Sports), Zumiez, Inc., Nordstrom, Inc., BDSRCO, Inc. (d/b/a Bealls and Stage), Sears Brands, LLC (d/b/a Sears and K-Mart), Bloomingdale's, Inc., Marshalls of MA, Inc., Bob's Stores, LLC, Dollar General Corporation, Target Corporate Services, Inc., The Finish Line, Inc., and Urban Outfitters, Inc. began to sell, market, promote, advertise and distribute clothing which displayed the trademark HYBRID, including but not limited to tank tops, t-shirts and sweatshirts, which they obtained from Hybrid Promotions. (Exh. B)

73. Neither Plaintiff, nor any of its predecessors-in-interest, has ever authorized Hybrid Promotions or any other Defendant to use its trademark HYBRID & COMPANY, or any variation thereof, in association with any products sold by Hybrid Promotions.

74. Because Defendants are operating in the same marketplace as Plaintiff, for clothing, and because Defendants are selling clothing under a trademark, HYBRID, which is

virtually identical to Plaintiff's trademark, HYBRID & COMPANY, there is a high likelihood that consumers will be confused into believing, wrongly, that Defendants' products are associated with, emanate from, are authorized or sponsored by, or are otherwise connected with, Plaintiff.

75. Defendants' sale, offering for sale, marketing, promoting, advertising, distributing, producing and manufacturing of clothing displaying the trademark HYBRID has caused, and will continue to cause, irreparable damage to Plaintiff's business, goodwill and reputation.

### C. Hybrid Promotions' Application For A Trademark Registration

76. In or around February 2011, Hybrid Promotions filed an application with the USPTO seeking a registration for the trademark HYBRID, in International Class 25, for use in association with clothing, including but not limited to tank tops, t-shirts and sweatshirts. (Exh. C)

77. In an Office Action, dated May 25, 2011, the USPTO rejected Hybrid Promotions' application for a trademark registration on the ground that there is a likelihood of confusion between the trademark HYBRID and Plaintiff's trademark HYBRID & COMPANY, for which Plaintiff received a registration and which Plaintiff employs on the same goods, clothing, for which Hybrid Promotions seeks a registration. (Exh. D)

78. Rather than responding to the USPTO's Office Action on its merits, in or around November 2011, Hybrid Promotions filed a petition to cancel Plaintiff's trademark registration for HYBRID & COMPANY, Registration No. 3,723,220, with the Trademark Trial

and Appeal Board (“TTAB”) of the USPTO. Upon filing this action, Plaintiff intends to request the TTAB to suspend that proceeding pending resolution of this action. (Exh. E)

**FIRST CAUSE OF ACTION  
DECLARATION OF TRADEMARK  
OWNERSHIP UNDER 28 U.S.C. §2201  
(Against Defendant Hybrid Promotions)**

79. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 78 as if fully set forth herein.

80. By virtue of the fact that it filed a petition to cancel Plaintiff’s registered trademark HYBRID & COMPANY, Registration No. 3,723,220, Defendant Hybrid Promotions has created a dispute as to Plaintiff’s ownership rights in this trademark.

81. As there is a dispute as to the rights in the trademark HYBRID & COMPANY, a case or controversy exists within the meaning of 28 U.S.C. §2201.

82. Plaintiff seeks a declaration that it maintains common law rights in the trademark HYBRID & COMPANY and that its trademark registration for HYBRID & COMPANY, Registration No. 3,723,220, is valid and enforceable.

**SECOND CAUSE OF ACTION  
TRADEMARK INFRINGEMENT  
UNDER 15 U.S.C. §1114(1)  
(Against All Defendants)**

83. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 78 as if fully set forth herein.

84. The trademark used by Defendants, HYBRID, is confusingly similar to the Plaintiff’s registered trademark, HYBRID & COMPANY, which Plaintiff used in commerce prior to Defendants’ adoption and use of their trademark.

85. The goods on which Defendants use their trademark, clothing items, are identical or closely related to the goods on which Plaintiff uses its trademark HYBRID & COMPANY.

86. Defendants' unauthorized use of the trademark HYBRID is likely to cause confusion and mistake, and to deceive consumers as to the source, sponsorship or origin of Defendants' goods and specifically to cause consumers to believe that Defendants' goods are sponsored by, affiliated with, approved by or otherwise connected to Plaintiff.

87. As a consequence of their foregoing conduct, Defendants have infringed Plaintiff's registered trademark, Registration No. 3,723,220, in violation of the Lanham Act, 15 U.S.C. §1114(1).

88. Upon information and belief, Defendants' conduct is willful, deliberate and was undertaken in bad faith, with full knowledge that Plaintiff has rights, through its prior use and federal trademark registration, in the trademark HYBRID & COMPANY, and therefore with the intent to reap the benefit of the goodwill which Plaintiff developed in this trademark.

89. Defendants' conduct has caused and is causing irreparable injury to Plaintiff.

**THIRD CAUSE OF ACTION  
UNFAIR COMPETITION  
UNDER 15 U.S.C. §1125(a)  
(Against All Defendants)**

90. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 78 as if fully set forth herein.

91. The trademark used by Defendants, HYBRID, is confusingly similar to the Plaintiff's trademark, HYBRID & COMPANY, which Plaintiff used in commerce prior to Defendants' adoption and use of their trademark.

92. The goods on which Defendants use their trademark, clothing items, are identical or closely related to the goods on which Plaintiff uses its trademark HYBRID & COMPANY.

93. Defendants' unauthorized use of the trademark HYBRID is likely to cause confusion and mistake, and to deceive consumers as to the source, sponsorship or origin of Defendants' goods and specifically to cause consumers to believe that Defendants' goods are sponsored by, affiliated with, approved by or otherwise connected to Plaintiff.

94. As a consequence of their foregoing conduct, Defendants have falsely designated the origin of their goods and thereby engaged in unfair competition in violation of the Lanham Act, 15 U.S.C. §1125(a).

95. Upon information and belief, Defendants' conduct is willful, deliberate and was undertaken in bad faith, with full knowledge that Plaintiff has rights, through its prior use, in the trademark HYBRID & COMPANY, and therefore with the intent to reap the benefit of the goodwill which Plaintiff developed in this trademark.

96. Defendants' conduct has caused and is causing irreparable injury to Plaintiff.

**FOURTH CAUSE OF ACTION  
UNFAIR COMPETITION  
UNDER NEW YORK COMMON LAW  
(Against All Defendants)**

97. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 78 as if fully set forth herein.

98. The trademark used by Defendants, HYBRID, is confusingly similar to the Plaintiff's trademark, HYBRID & COMPANY, which Plaintiff used in commerce prior to Defendants' adoption and use of their trademark.

99. The goods on which Defendants use their trademark, clothing items, are identical or closely related to the goods on which Plaintiff uses its trademark HYBRID & COMPANY.

100. Defendants' unauthorized use of the trademark HYBRID is likely to cause confusion and mistake, and to deceive consumers as to the source, sponsorship or origin of Defendants' goods and specifically to cause consumers to believe that Defendants' goods are sponsored by, affiliated with, approved by or otherwise connected to Plaintiff.

101. As a consequence of their foregoing conduct, Defendants have falsely designated the origin of their goods and thereby engaged in unfair competition in violation of New York unfair competition law.

102. Upon information and belief, Defendants' conduct is willful, deliberate and was undertaken in bad faith, with full knowledge that Plaintiff has rights, through its prior use, in the trademark HYBRID & COMPANY, and therefore with the intent to reap the benefit of the goodwill which Plaintiff developed in this trademark.

103. Defendants' conduct has caused and is causing irreparable injury to Plaintiff.

**FIFTH CAUSE OF ACTION  
DECEPTIVE AND UNFAIR TRADE PRACTICES  
UNDER N.Y. GENERAL BUSINESS LAW §349  
(Against All Defendants)**

104. Plaintiff repeats and incorporates by reference the allegations in paragraphs 1 through 78 as if fully set forth herein.

105. The trademark used by Defendants, HYBRID, is confusingly similar to the Plaintiff's trademark, HYBRID & COMPANY, which Plaintiff used in commerce prior to Defendants' adoption and use of their trademark.

106. The goods on which Defendants use their trademark, clothing items, are identical or closely related to the goods on which Plaintiff uses its trademark HYBRID & COMPANY.

107. Defendants' unauthorized use of the trademark HYBRID is likely to cause confusion and mistake, and to deceive consumers as to the source, sponsorship or origin of Defendants' goods and specifically to cause consumers to believe that Defendants' goods are sponsored by, affiliated with, approved by or otherwise connected to Plaintiff.

108. As a consequence of their foregoing conduct, Defendants have engaged in deceptive acts and practices in the conduct of their business, trade or commerce in violation of New York General Business Law §349.

109. Upon information and belief, Defendants' conduct is willful, deliberate and was undertaken in bad faith, with full knowledge that Plaintiff has rights, through its prior use, in the trademark HYBRID & COMPANY, and therefore with the intent to reap the benefit of the goodwill which Plaintiff developed in this trademark.

110. Defendants' conduct has caused and is causing irreparable injury to Plaintiff.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays for judgment as follows:

1. A declaration that Plaintiff owns common law rights in the trademark HYBRID & COMPANY;
2. A declaration that Plaintiff's federal registration for the trademark HYBRID & COMPANY, Registration No. 3,723,220, is valid and enforceable;
3. A permanent injunction enjoining all Defendants from:

- a. using the trademark HYBRID, or any other similar name or trademark which is confusingly similar to the trademark HYBRID & COMPANY, in connection with the sale, offering for sale, promotion, advertising, marketing, manufacture, production, importation or distribution of clothing or any related goods;
  - b. conducting any activities in the United States, including but not limited to selling, offering for sale, promoting, advertising, marketing, manufacturing, producing, importing or distributing clothing or any related goods, which would infringe Plaintiff's trademark HYBRID & COMPANY;
  - c. conducting any activities in the United States, including but not limited to selling, offering for sale, promoting, advertising, marketing, manufacturing, producing, importing or distributing clothing or any related goods, which would constitute unfair competition with Plaintiff's trademark HYBRID & COMPANY or a false designation of origin of Defendants' goods as emanating from or being associated or affiliated with, or sponsored by, Plaintiff;
  - d. seeking a state or federal registration for the trademark HYBRID, or any similar variation thereof, for clothing which is likely to cause confusion with Plaintiff's trademark HYBRID & COMPANY;
4. An order directing Defendants to destroy, or delivery to Plaintiff for destruction, all goods, labels, tags, signs, packaging as well as promotional, marketing or

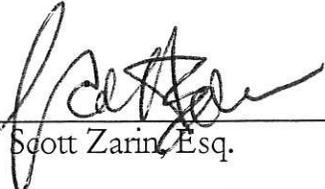
advertising material in Defendants' possession, custody or control, which displays the trademark HYBRID, or any similarly confusing trademark;

5. An order awarding Plaintiff all monetary damages, pursuant to 15 U.S.C. §1117, which it has sustained as a consequence of Defendants' infringement of its trademark HYBRID & COMPANY in violation of 15 U.S.C. §1114(1);
6. An order awarding Plaintiff all monetary damages, pursuant to 15 U.S.C. §1117, which it has sustained as a consequence of Defendants' unfair competition in violation of 15 U.S.C. §1125(a);
7. An order awarding Plaintiff enhanced statutory damages, pursuant to 15 U.S.C. §1117(a), due to Defendants' willful and intentional violation of Plaintiff's rights under the Lanham Act;
8. An order awarding Plaintiff all monetary damages which it has sustained as a consequence of Defendants' violation of the New York common law of unfair competition;
9. An order awarding Plaintiff all monetary damages which it has sustained as a consequence of Defendants' violation of New York General Business Law §349;
10. An order awarding Plaintiff all costs it has incurred to bring this action, including but not limited to legal fees, pursuant to 15 U.S.C. §1117(a) and any applicable New York law; and
11. An order awarding Plaintiff any such other relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury for all issues so triable.

Dated: February 26, 2014  
New York, NY

By:   
Scott Zarin, Esq.

ZARIN & ASSOCIATES P.C.  
One Penn Plaza, Suite 4615  
New York, NY 10119  
Tel. No. (212)580-3131  
scottzarin@copyrighttrademarkcounsel.com

SIMON GLUCK & KANE LLP  
One Penn Plaza, Suite 4615  
New York, NY 10119  
Tel. No. (212)775-0055

# Exhibit A

# United States of America

United States Patent and Trademark Office

## Hybrid & company

**Reg. No. 3,723,220** FASHION EXCHANGE, LLC (NEW YORK LIMITED LIABILITY COMPANY)  
Registered Dec. 8, 2009 SUITE 2600  
1407 BROADWAY  
NEW YORK, NY 10018

**Int. Cl.: 25**

TRADEMARK  
PRINCIPAL REGISTER

FOR: BABY TOPS; BATHING SUITS; BODY SUITS; CLOTHING, NAMELY, WRAP-AROUNDS; COATS; COATS OF DENIM; CROP TOPS; DENIM JACKETS; DENIMS; DRESS SUITS; DRESSES; DRY SUITS; FABRIC BELTS; FABRIC SOLD AS AN INTEGRAL COMPONENT OF FINISHED CLOTHING ITEMS, NAMELY, MEN'S, LADIES' AND CHILDREN'S OUTERWEAR IN THE NATURE OF PARKAS, PUFFER JACKETS, COATS, RAINCOATS, WIND RESISTANT JACKETS, SWEATERS AND FOOTWEAR; FOOTWEAR; GYM SUITS; HALTER TOPS; HOODS; INFANT AND TODDLER ONE PIECE CLOTHING; JACKETS; JERSEYS; JOGGING SUITS; JUDO SUITS; KARATE SUITS; LEATHER BELTS; MANTLES; MUFFLERS; MUSCLE TOPS; ONE-PIECE PLAY SUITS; PANTS; PARTS OF CLOTHING, NAMELY, GUSSETS FOR TIGHTS, GUSSETS FOR STOCKINGS, GUSSETS FOR BATHING SUITS, GUSSETS FOR UNDERWEAR, GUSSETS FOR LEOTARDS AND GUSSETS FOR FOOTLETS; PLAY SUITS; RAIN SUITS; RUGBY TOPS; SHIFTS; SHIRTS; SHIRTS FOR SUITS; SHORT SETS; SHOULDER WRAPS; SKI SUITS; SKI SUITS FOR COMPETITION; SKIRT SUITS; SLACKS; SNOW BOARDING SUITS; SNOW SUITS; SUIT COATS; SUITS; SWADDLING CLOTHES; SWEAT SUITS; TANK TOPS; TIES; TOPS; TRACK SUITS; TUBE TOPS; VESTS; WRAPS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 3-1-2006; IN COMMERCE 3-1-2006.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COMPANY", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORD "HYBRID" WITH DECORATIVE ELEMENTS CONSISTING OF FEATURES AND FANCIFUL SCROLLS TOGETHER WITH "& COMPANY" IN SMALLER AND LESS PROMINENT STYLIZATION.

SN 77-492,413, FILED 6-5-2008.



*David J. Kayas*

Director of the United States Patent and Trademark Office

CARRIE GENOVESE, EXAMINING ATTORNEY

# Exhibit B

[COMPANY](#) / [BRANDS](#) / [LICENSES](#) / [MALE NOVELTY](#) / [FEMALE NOVELTY](#) /

[ABOUT US](#) \* [OUR SERVICES](#) \* [DISTRIBUTION & RETAIL PARTNERS](#) \* [COMMUNITY](#) \* [CONTACT US](#) \*

**DISTRIBUTION & RETAIL PARTNERS**

Hybrid is committed to quality products. Our diverse product offering comes from a multi-tiered distribution strategy. We service all retailers across the distribution pyramid, from specialty and better department stores to the secondary market and clubs. Hybrid has created a competitive advantage through its ability to place product across a breadth of distribution in all trade channels.

Please select a retailer category to view the retailers we work with.

BETTER DEPARTMENT STORES

CLUBS

DISCOUNT

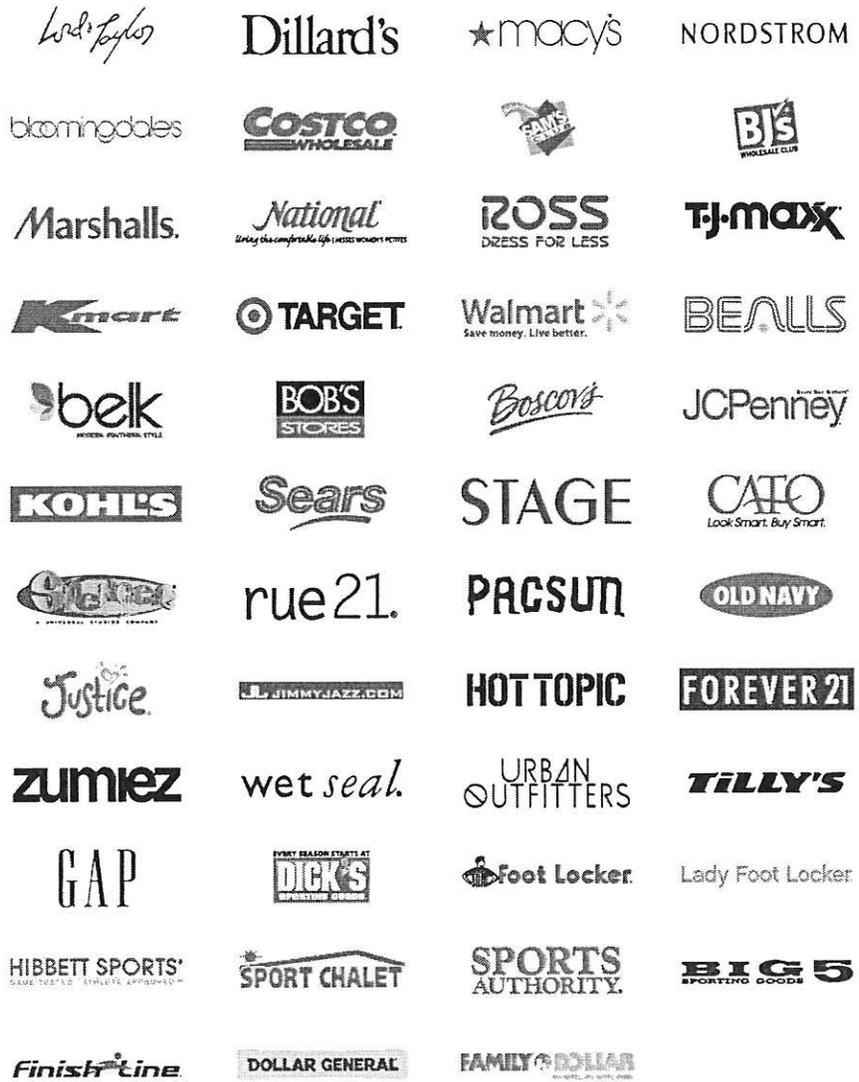
MASS MARKET

MID-TIER

SPECIALTY

SPORTING GOODS

VALUE





Sign Up & Save \$5

Swim Preview

My Account

Sign In

Optical

Pharmacy

Weekly Flyer

My Extra Savings

Gift Cards

Gift Registry

Store Locator

Shop by Department

My Store: Select Store

My Cart 0

hybrid

Narrow By [Clear All](#)

**CATEGORY**

- Kids (13)
- Home (6)
- Kitchen & Dining (1)
- Electronics (2)
- Sports & Team Shop (3)

**SIZE** [Size Chart](#)

- M (14)
- XS (14)
- L (13)
- S (12)
- XL (12)

[Show More](#)

**COLOR**

**BRAND**

- Hybrid (15)
- Gloria Vanderbilt (3)
- Truly Cord Free (3)
- Intech (2)

Search Results

# There are 27 products that match your search for 'hybrid'.

Viewing 1 - 24 of 27

[View All 27 Items](#)

Sort by: [Relevance](#)

Hybrid Boys Pixel Gaming Short Sleeve Tee	Hybrid Boys Pro Status Long Sleeve T-shirt	Hybrid Boys That's Wrong Long Sleeve T-shirt	Image Coming Soon <span>New</span>
<b>Sale \$7.99</b> Reg. \$15.99	<b>Clearance \$5.99</b> Reg. \$19.99	<b>Clearance \$5.99</b> Reg. \$19.99	<b>Sale \$6.99</b> Reg. \$13.99
			Temp. out of stock online

Sony (2)

**RATINGS**  
Show More

0 Stars Or Above (27)

**PRICE**

\$0 and Up (27)

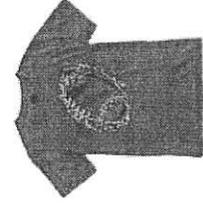
Image  
Coming Soon

New

Hybrid Boys Poly Screen  
Short Sleeve Tee

**Sale \$6.99**  
Reg. \$13.99

Temp. out of stock online



Hybrid Boys Poly Screen  
Short Sleeve Tee

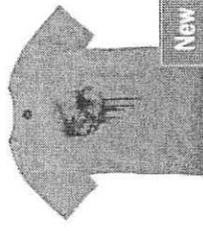
**Sale \$6.99**  
Reg. \$13.99



New

Hybrid Boys Poly Screen  
Short Sleeve Tee

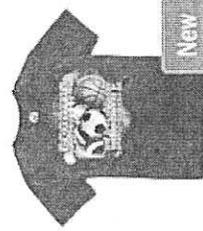
**Sale \$6.99**  
Reg. \$13.99



New

Hybrid Boys Poly Screen  
Short Sleeve Tee

**Sale \$6.99**  
Reg. \$13.99



New

Hybrid Boys Poly Screen  
Short Sleeve Tee

**Sale \$6.99**  
Reg. \$13.99



Hybrid Boys Be A Ninja  
Short Sleeve Tee

**Sale \$7.99**  
Reg. \$15.99



Hybrid Boys Poly Screen  
Short Sleeve Tee

**Sale \$6.99**  
Reg. \$13.99



Hybrid Boys Poly Screen  
Short Sleeve Tee

**Sale \$6.99**  
Reg. \$13.99

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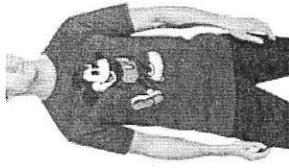
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### Hybrid Men's Fashion

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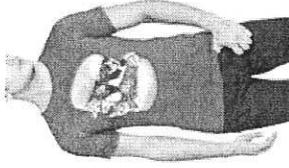
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Relevance ▼



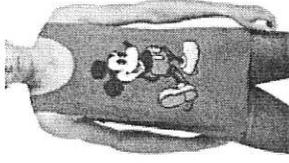
Hybrid Men's Disney Pixel Mickey...  
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2



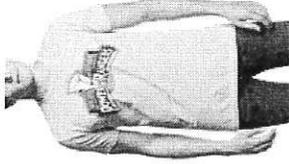
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\$24 \$7.20

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Hybrid Men's Pickle Mixie Tank...  
\$22 \$6.60-7.17

3



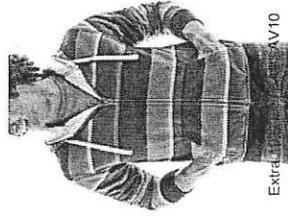
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\$24

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Hybrid Men's Marvel Wolverine...  
\$24

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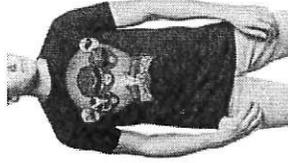
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Hybrid Men's Marvel Captain Am...  
\$24

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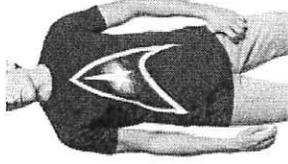
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Hybrid Men's Marvel Thor Classi...  
\$24

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Hybrid Men's Star Trek Beyond Tee  
\$24

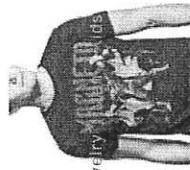
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Hybrid Men's Marvel Thor Ham... \$24

Hybrid Men's Marvel Thor Ham... \$24

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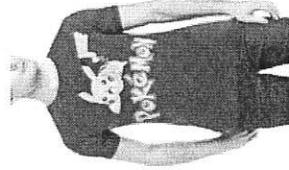
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Editors' Picks

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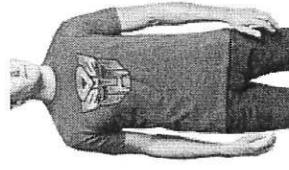


Hybrid \$24



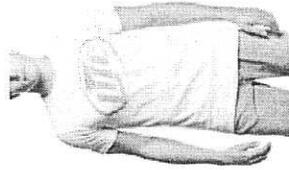
Hybrid Men's Pokemon Logo Sh... \$24

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Hybrid Men's Transformers Vinta... \$24

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Hybrid Men's Miller Light Short S... \$24

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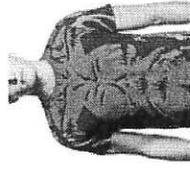
Hybrid Men's Miller High Life Sh... \$24

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Hybrid Men's Disney Animal Sho... \$24

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Hybrid Men's Star Trek Logo T-S... \$24

Hybrid Men's Star Trek Logo T-S... \$24

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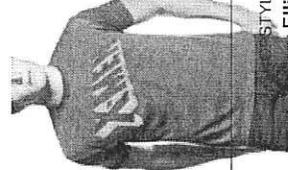
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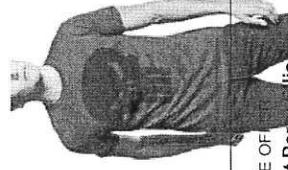
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Hybrid Men's Marvel X-Men Gro... \$24

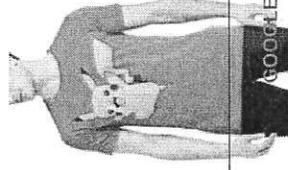
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Hybrid Men's Star Trek Kirk Phot...



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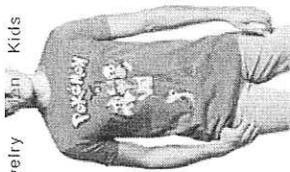
Hybrid Men's Back To The Futur... \$24



Hybrid Men's Back To The Futur... \$24

\$24

Women Bags Shoes Beauty Jewelry Men Kids Home Offers Sale Editors' Picks

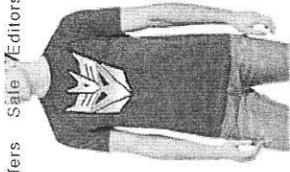


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\$24

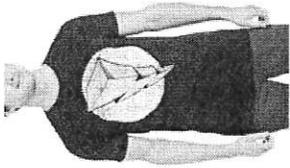
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Hybrid Men's Transformers Dec... \$24

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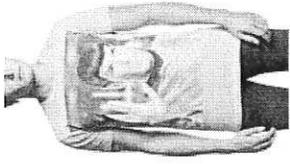
\$24



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\$24 \$20.20

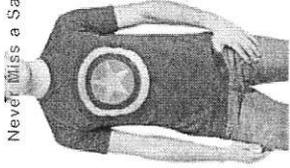


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\$24

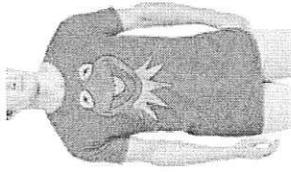
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Hybrid Men's Marvel Shield Burn... \$24

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Hybrid Men's Disney Kermit Big... \$24

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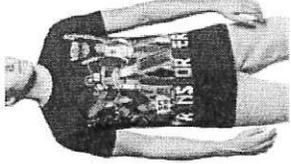
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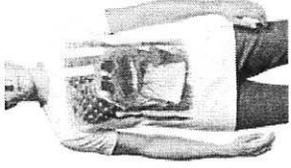
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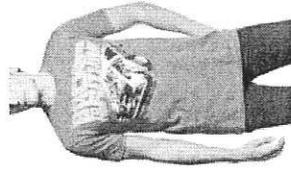
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Hybrid Men's Disney American A... \$24

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Hybrid Men's Back To The Futur... \$24

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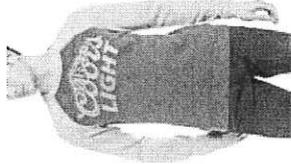
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Hybrid Men's Coors Light Fleece... \$42 \$26.99

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Hybrid Men's Falling Skies Fight... \$24

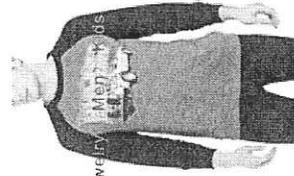
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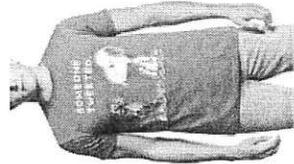
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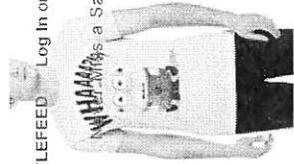
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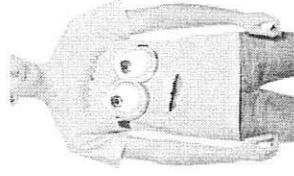
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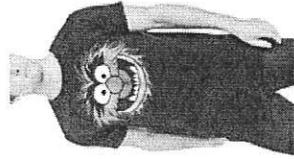
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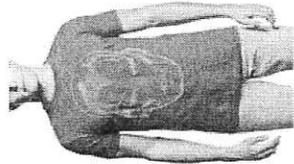
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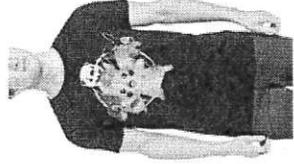
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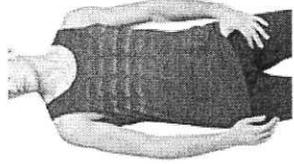
Hybrid Men's Disney Animal Big...  
\$24



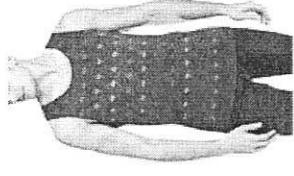
Hybrid Men's Marvel Ironman Fa...  
\$24



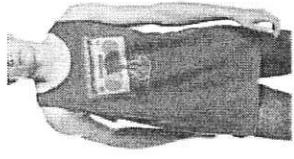
Hybrid Men's Pokemon Group A...  
\$24



Hybrid Men's Buggy  
\$22 \$6.60



Hybrid Men's Vacay  
\$22 \$6.60



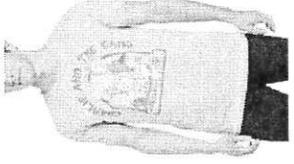
Hybrid Men's Rock N Walk  
\$22 \$6.60



Hybrid Men's Coke Logo Fleece...  
\$42 \$26.99



Hybrid Men's Disney Since The...  
\$24



Hybrid Men's Peanuts Charlie an...  
\$24

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# Exhibit C

## Trademark/Service Mark Application, Principal Register

Serial Number: 85245387

Filing Date: 02/17/2011

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	85245387
<b>MARK INFORMATION</b>	
*MARK	<u>HYBRID</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	HYBRID
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	Hybrid Promotions, LLC
DBA/AKA/TA/Formerly	DBA Hybrid; Hybrid Apparel; Hybrid Tees
*STREET	10711 Walker Street
*CITY	Cypress
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	90630
<b>LEGAL ENTITY INFORMATION</b>	
TYPE	limited liability company
STATE/COUNTRY WHERE LEGALLY ORGANIZED	California
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	

INTERNATIONAL CLASS	025
*IDENTIFICATION	knit tops, namely, tank tops, t-shirts, sweatshirts, hooded sweatshirts
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 02/00/1999
FIRST USE IN COMMERCE DATE	At least as early as 02/00/1999
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT11\IMAGEOUT 11\852\453\85245387\xml1\ APP0003.JPG
SPECIMEN DESCRIPTION	photo of a padprint applied to the neckline of a t-shirt
<b>ADDITIONAL STATEMENTS SECTION</b>	
SECTION 2(f)	The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.
<b>ATTORNEY INFORMATION</b>	
NAME	Christa Perez
FIRM NAME	Friedman Stroffe & Gerard
STREET	19800 MacArthur Blvd., Suite 1100
CITY	Irvine
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	92612
PHONE	949.265.1100
FAX	949.265.1199
EMAIL ADDRESS	jharlow@fsglawyers.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Bryan Friedman
<b>CORRESPONDENCE INFORMATION</b>	
NAME	Christa Perez
FIRM NAME	Friedman Stroffe & Gerard
STREET	19800 MacArthur Blvd., Suite 1100

CITY	Irvine
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	92612
PHONE	949.265.1100
FAX	949.265.1199
EMAIL ADDRESS	jharlow@fsglawyers.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
<b>FEE INFORMATION</b>	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
<b>SIGNATURE INFORMATION</b>	
SIGNATURE	/GDogan/
SIGNATORY'S NAME	Gavin Dogan
SIGNATORY'S POSITION	President of Marketing
DATE SIGNED	02/17/2011

---

## Trademark/Service Mark Application, Principal Register

**Serial Number: 85245387**

**Filing Date: 02/17/2011**

### To the Commissioner for Trademarks:

**MARK:** HYBRID (Standard Characters, see mark)

The literal element of the mark consists of HYBRID.

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

The applicant, Hybrid Promotions, LLC, DBA Hybrid; Hybrid Apparel; Hybrid Tees, a limited liability company legally organized under the laws of California, having an address of

10711 Walker Street

Cypress, California 90630

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 025: knit tops, namely, tank tops, t-shirts, sweatshirts, hooded sweatshirts

In International Class 025, the mark was first used at least as early as 02/00/1999, and first used in commerce at least as early as 02/00/1999, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) photo of a padprint applied to the neckline of a t-shirt.

Specimen File1

The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.

The applicant's current Attorney Information:

Christa Perez and Bryan Friedman of Friedman Stroffe & Gerard

19800 MacArthur Blvd., Suite 1100

Irvine, California 92612

United States

The applicant's current Correspondence Information:

Christa Perez

Friedman Stroffe & Gerard

19800 MacArthur Blvd., Suite 1100  
Irvine, California 92612  
949.265.1100(phone)  
949.265.1199(fax)  
jharlow@fsglawyers.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 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: /GDogan/ Date Signed: 02/17/2011  
Signatory's Name: Gavin Dogan  
Signatory's Position: President of Marketing

RAM Sale Number: 4974  
RAM Accounting Date: 02/18/2011

Serial Number: 85245387  
Internet Transmission Date: Thu Feb 17 18:38:23 EST 2011  
TEAS Stamp: USPTO/BAS-74.8.207.146-20110217183823278  
194-85245387-480a84c2e4388ebadcc3e495f21  
24334fb6-CC-4974-20110217171820192333

**HYBRID**



**Hybrid**  
T-shirt

LARGE

100% COTTON

WASHING MACHINE SAFE WITH LIKE COLORS  
DOES NOT REQUIRE BLEACHING WITHIN RECOMMENDED  
TEMPERATURE RANGE AND NOT FROM DISCOLORATION  
MADE IN CHINA - 88811758

# Exhibit D

**To:** Hybrid Promotions, LLC (jharlow@fsglawyers.com)  
**Subject:** U.S. TRADEMARK APPLICATION NO. 85245387 - HYBRID - N/A  
**Sent:** 5/25/2011 4:19:34 PM  
**Sent As:** ECOM108@USPTO.GOV  
**Attachments:** [Attachment - 1](#)  
[Attachment - 2](#)  
[Attachment - 3](#)  
[Attachment - 4](#)  
[Attachment - 5](#)

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

**APPLICATION SERIAL NO.** 85245387

**MARK:** HYBRID

**\*85245387\***

**CORRESPONDENT ADDRESS:**

CHRISTA PEREZ  
FRIEDMAN STROFFE & GERARD  
19800 MACARTHUR BLVD STE 1100  
IRVINE, CA 92612-2440

**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:** Hybrid Promotions, LLC

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

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

jharlow@fsglawyers.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:** 5/25/2011

The assigned trademark examining attorney has reviewed the referenced application and has determined the following:

**SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION**

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3723220. 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.

Taking into account the relevant *du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. The marks are compared for similarities in their appearance, sound, connotation and commercial impression. TMEP §§1207.01, 1207.01(b). The goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. *See Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002); *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1336, 57 USPQ2d 1557, 1559 (Fed. Cir. 2001); TMEP §§1207.01, 1207.01(a)(vi).

In the case at hand, applicant seeks registration of “HYBRID” in standard characters for various types of clothing. The cited mark in Registration No. 3723220 is “HYBRID & COMPANY” in stylized form for various types of clothing.

### **Comparison of the Marks**

Regarding the first part of the test, applicant’s mark, “HYBRID” is virtually identical in appearance, sound, connotation and commercial impression to registrant’s mark, “HYBRID & COMPANY,” the only difference being the addition of the generic wording “& company” and the stylized font in registrant’s mark. Regarding the issue of likelihood of confusion, applicant should consider the following:

The question is not whether people will confuse the marks, but whether the marks will confuse people into believing that the goods and/or services they identify come from the same source. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 201, 175 USPQ 558, 558-59 (C.C.P.A. 1972); TMEP §1207.01(b). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *See Recot, Inc. v. M.C. Becton*, 214 F.2d 1322, 1329-30, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000); *Visual Info. Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179, 189 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537, 540-41 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); TMEP §1207.01(b).

Consumers are generally more inclined to focus on the first word, prefix or syllable in any trademark or service mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F. 3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *see also Mattel Inc. v. Funline Merch. Co.*, 81

USPQ2d 1372, 1374-75 (TTAB 2006); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered” when making purchasing decisions). Here, the first word of both marks is HYBRID.

Although a disclaimed portion of a mark certainly cannot be ignored, and the marks must be compared in their entireties, one feature of a mark may be more significant in creating a commercial impression. Disclaimed matter is typically less significant or less dominant when comparing marks. See *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060, 224 USPQ 749, 752 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Accordingly, the addition of “Company” in the registrant’s mark does not obviate the similarities between the marks. The applicant’s mark, HYBRID, contains the same dominant feature, namely, HYBRID, as the registered mark, HYBRID & COMPANY. The marks are compared in their entireties under a Trademark Act Section 2(d) analysis. See TMEP §1207.01(b). Nevertheless, one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976); *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1987); see TMEP §1207.01(b)(viii), (c)(ii).

Since the term HYBRID is very significant in creating a commercial impression, the marks are highly similar in sound, appearance, meaning and connotation.

### **Comparison of the Goods**

If the goods and/or services of the respective parties are “similar in kind and/or closely related,” the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would be required with diverse goods and/or services. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); see *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b).

Both the applicant and the registrant in this instance are providing essentially the same goods, namely, various types of clothing. Therefore, with the contemporaneous use of highly similar marks, consumers are likely to reach the mistaken conclusion that the goods are related and originate from a common source. As such, registration must be refused under Trademark Action Section 2(d).

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

Applicant should note the following additional ground for refusal.

### ***Prior Pending Application***

The filing date of pending Application Serial No. 77950129 precedes applicant’s filing date. See attached referenced application. If the mark in the referenced application registers, applicant’s mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion between the two marks. See 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant’s response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant's mark and the mark in the referenced application. Applicant's election not to submit arguments at this time in no way limits applicant's right to address this issue later if a refusal under Section 2(d) issues.

If applicant responds to the refusal to register, then applicant must also respond to the following requirement.

***Unnecessary Section 2(f) Claim***

Applicant claims that the applied-for mark has acquired distinctiveness under Trademark Act Section 2(f); however, this claim is unnecessary because the mark appears to be inherently distinctive and is eligible for registration on the Principal Register without proof of acquired distinctiveness. *See* 15 U.S.C. §1052(f); TMEP §1212.02(d).

Applicant may request to withdraw the claim of acquired distinctiveness by instructing the trademark examining attorney to delete it from the application record. *See* TMEP §1212.02(d). If applicant does not withdraw the claim, it will remain in the application record and be printed on the registration certificate.

A claim of acquired distinctiveness may be construed as a concession by applicant that the applied-for mark is not inherently distinctive. *In re Reed Elsevier Prop. Inc.*, 77 USPQ2d 1649, 1652 n.3 (TTAB 2005), *aff'd*, 482 F.3d 1376, 82 USPQ2d 1378 (Fed. Cir. 2007); *see* TMEP §1212.02(b).

/Caryn Glasser/  
Trademark Examining Attorney  
Law Office 108  
Phone: (571) 270-1517  
Fax: (571) 270-2517  
caryn.glasser@uspto.gov(informal)

**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>.

# Exhibit E

ESTTA Tracking number: **ESTTA443051**

Filing date: **11/23/2011**

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	Hybrid Promotions, LLC		
Entity	Limited Liability Company	Citizenship	California
Address	10711 Walker Street Cypress, CA 90630 UNITED STATES		

Attorney information	Christa D. Perez Friedman Stroffe & Gerard, P.C. 19800 MacArthur Blvd. Suite 1100 Irvine, CA 92612 UNITED STATES cperez@fsglawyers.com Phone:949 265 1116		
----------------------	--	--	--

#### Registration Subject to Cancellation

Registration No	3723220	Registration date	12/08/2009
Registrant	Fashion Exchange, LLC Suite 2600 1407 Broadway New York, NY 10018 UNITED STATES		

#### Goods/Services Subject to Cancellation

<p>Class 025. First Use: 2006/03/01 First Use In Commerce: 2006/03/01 All goods and services in the class are cancelled, namely: Baby tops; Bathing suits; Body suits; Clothing, namely, wrap-arounds; Coats; Coats of denim; Crop tops; Denim jackets; Denims; Dress suits; Dresses; Dry suits; Fabric belts; Fabric sold as an integral component of finished clothing items, namely, men's, ladies' and childrens' outerwear in the nature of parkas, puffer jackets, coats, raincoats, wind resistant jackets, sweaters and footwear; Footwear; Gym suits; Halter tops; Hoods; Infant and toddler one piece clothing; Jackets; Jerseys; Jogging suits; Judo suits; Karate suits; Leather belts; Mantles; Mufflers; Muscle tops; One-piece play suits; Pants; Parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; Play suits; Rain suits; Rugby tops; Shifts; Shirts; Shirts for suits; Short sets; Shoulder wraps; Ski suits; Ski suits for competition; Skirt suits; Slacks; Snow boarding suits; Snow suits; Suit coats; Suits; Swaddling clothes; Sweat suits; Tank tops; Ties; Tops; Track suits; Tube tops; Vests; Wraps</p>
--

#### Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)
----------------------------------	----------------------------

#### Mark Cited by Petitioner as Basis for Cancellation

U.S. Application	85245387	Application Date	02/17/2011
------------------	----------	------------------	------------

No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HYBRID		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1999/02/00 First Use In Commerce: 1999/02/00 knit tops, namely, tank tops, t-shirts, sweatshirts, hooded sweatshirts		

Attachments	85245387#TMSN.jpeg ( 1 page )( bytes ) Petition to Cancel.pdf ( 4 pages )(102726 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	/christa d perez/
Name	Christa D. Perez
Date	11/23/2011

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

Hybrid Promotions, LLC,	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No.
	)	
Fashion Exchange, LLC,	)	
	)	
Respondent	)	
<hr style="border: 0.5px solid black;"/>		

**PETITION FOR CANCELLATION**

Petitioner Hybrid Promotions, LLC, a California limited liability company ("Petitioner"), with its principal place of business at 10711 Walker Street, Cypress, CA 90630, believes that it is being and will continue to be damaged by U.S. Trademark Registration 3723220 owned by respondent Fashion Exchange, LLC, a New York limited liability company ("Respondent"), and hereby petitions to cancel said registration pursuant to 15 U.S.C. §1064 and 37 C.F.R. §2.111.

As grounds therefor, Petitioner alleges that:

1. Petitioner's mark HYBRID is the subject of trademark Application Serial Number 85245387, filed by Petitioner.
2. Petitioner has been manufacturing and distributing apparel under the HYBRID mark since at least as early as 1999.
3. Petitioner has been using HYBRID's mark in interstate commerce since at least as early as 1999.
4. Through the years Petitioner has expended substantial amounts of money, time and effort in developing, advertising, and promoting the HYBRID mark and has received substantial national publicity with respect to its apparel items.
5. The HYBRID mark is a strong trademark, and has developed goodwill and a good reputation exclusive to Petitioner.

6. Petitioner has prominently and continuously used the HYBRID mark in commerce on its apparel products. The HYBRID mark is prominently affixed to its products in at least two locations: (a) on the sewn in or screened in label on the inside of the back collar of its shirts, and (b) on the hang tag attached to its products.

7. Although Petitioner has never authorized Respondent to use its HYBRID mark in any manner, Respondent has been using Registration No. 3723220 for the mark HYBRID & COMPANY in connection with goods in Class 25 ("Respondent's Mark").

8. Respondent filed its application on June 5, 2008 and alleged a date of first use of Respondent's Mark of March 5, 2006. Both the date of first use and the filing date of Respondent's mark are well after Petitioner's first use of the HYBRID mark. Accordingly, Respondent has no use of its mark, either actual or constructive, prior to Petitioner's use of the HYBRID mark.

9. Upon information and belief, Respondent is using Respondent's Mark to sell apparel products – the same goods sold by petitioner under its HYBRID mark – to the same or similar consumer as Petitioner, using nearly the same trademark as that owned and used by petitioner. Thus, consumers are being misled into believing that the goods sold under Respondent's Mark are Petitioner's products, when, in fact, they are not.

10. Respondent's Mark, when applied to the goods recited in Respondent's registration, is so similar to the HYBRID Mark used with Petitioner's goods, as to create a likelihood of confusion, or to cause mistake, or to deceive, within the meaning of Section 2(d) of the Lanham Act, all to Petitioner's irreparable damage.

11. Respondent's Mark is confusingly and deceptively similar to petitioner's HYBRID mark, and Respondent is therefore not entitled to adopt, use or seek registration of Respondent's Mark in connection with the goods identified in Respondent's registration.

12. The goods identified in Respondent's registration are identical or closely related to the goods sold by Petitioner under its HYBRID mark, are used

in similar channels of trade and are likely to be encountered by those familiar with goods and services associated with Petitioner's HYBRID mark.

13. Respondent's Mark and Petitioner's HYBRID mark are nearly identical in appearance and are identical phonetically, in part, so that contemporaneous use of the respective marks will create a likelihood of confusion, mistake or deception among the trade and consumers.

14. Respondent's Mark is confusingly and deceptively similar to Petitioner's HYBRID mark, and may falsely imply or suggest an affiliation or other connection between Respondent and Petitioner which does not exist. The consuming public, upon seeing Respondent's Mark in association with Respondent's goods, is likely to believe that the goods are made, endorsed or sponsored by Petitioner, or that there is a trade connection or affiliation between Respondent and its goods, on the one hand, and Petitioner's goods on the other hand, when in fact, no such affiliation or sponsorship exists.

15. Petitioner is the prior user of the HYBRID mark for apparel items in Class 25. Petitioner and its business interests will be damaged if Respondent is permitted to maintain its registration and virtually identical mark. To be sure, any faults or defects in Respondent's goods would reflect adversely upon and seriously injure the valuable reputation and good will of Petitioner.

WHEREFORE, Petitioner believes that it is being and will continue to be damaged by Respondent's Mark and respectfully petitions that the subject registration be cancelled in its entirety.

Respectfully submitted,

FRIEDMAN STROFFE & GERARD, P.C.

Dated: November 23, 2011

By: Christa D. Perez

Christa D. Perez  
Attorneys for Petitioner

Certificate of Transmittal

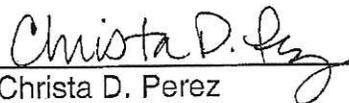
I, Christa D. Perez, hereby certify that a true copy of the foregoing Petition for Cancellation is being filed electronically with the TTAB via ESTTA on this day, November 23, 2011.

  
Christa D. Perez  
Attorney for Petitioner

Certificate of Service

I, Christa D. Perez, hereby certify that a true and correct copy of the foregoing Notice of Oppositions was served on Respondent on November 23, 2011 via first class mail to:

Fashion Exchange, LLC  
Suite 2600  
1407 Broadway  
New York, NY 10018

  
Christa D. Perez  
Attorney for Petitioner