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Filing date: **02/15/2012**

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

Proceeding	92055022
Party	Plaintiff Landau Uniforms, Incorporated
Correspondence Address	RUSSELL H WALKER WALKER MCKENZIE & WALKER PC 6363 POPLAR AVE, STE 402 MEMPHIS, TN 38119-4896 UNITED STATES rwalker@walkermckenzie.com, docket@walkermckenzie.com, rhwpat@gmail.com
Submission	Motion for Default Judgment
Filer's Name	Russell H. Walker, USPTO Reg. 35401
Filer's e-mail	rwalker@walkermckenzie.com, docket@walkermckenzie.com, rhwpat@gmail.com
Signature	/Russell H. Walker/
Date	02/15/2012
Attachments	B1064_Motion_for_Default_J.pdf (4 pages)(109309 bytes) B1064_Decl_of_RHW.pdf (12 pages)(2289824 bytes)

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

In re: Trademark Registration of Ritche Marquez Sacilioc
For the Mark: SMITTEN and design
Registration No.: 3,281,337
Registered: August 21, 2007
Int’l Class(es): 35

Landau Uniforms, Incorporated)	Attorney Docket No. B1,064
(a Tennessee corporation),)	
)	
Petitioner,)	
)	
v.)	TTAB Cancellation No. 92055022
)	
Ritche Marquez Sacilioc,)	
(a United States individual),)	
Registrant.)	

PETITIONER’S MOTION FOR DEFAULT JUDGMENT

1 Pursuant to 37 C.F.R. § 2.114(a), T.B.M.P. § 508, and F.R.C.P. 7(b), Petitioner, Landau
2 Uniforms, Incorporated, hereby moves the Board to enter a default judgment in Petitioner’s favor
3 pursuant to F.R.C.P. 55(a) in view of Registrant’s failure to file a timely Answer to the Petition
4 for Cancellation, to hold that the mark of Registration 3,281,337 has been abandoned by
5 Registrant, and to declare that Registration 3,281,337 is canceled. A Declaration of Russell H.
6 Walker, Esq., Petitioner’s undersigned attorney, is attached hereto as Exhibit A (“Walker
7 Declaration”), together with its attached Exhibits 1, 2, 3, and 4.

8 **I. FACTUAL BACKGROUND**

9 Petitioner Landau Uniforms, Incorporated (“Landau”) filed its Petition for Cancellation
10 of Registration 3,281,337 on January 5, 2012, alleging abandonment of Registrant’s mark
11 SMITTEN and design of said Registration 3,281,337, and this cancellation proceeding was
12 timely commenced by the Board. Service upon Registrant of the Petition for Cancellation was

1 made by mail. Walker Declaration, ¶ 3. A service copy of said Petition for Cancellation was
2 delivered to Registrant's address on January 7, 2012. Walker Declaration, ¶ 5; Exhibit 2 to
3 Walker Declaration. Out of an abundance of caution, service of the Petition for Cancellation was
4 also made by mail upon Rhean S. Fajardo, Esq., Registrant's former attorney of record during
5 the prosecution of said Registration 3,281,337. Walker Declaration, ¶¶ 6, 8. A service copy of
6 said Petition for Cancellation was delivered to the office address of said Rhean S. Fajardo, Esq.,
7 on January 10, 2012. Walker Declaration, ¶ 9; Exhibit 4 to Walker Declaration.

8 **II. ARGUMENT**

9 The Federal Rules of Civil Procedure generally apply to proceedings before the
10 Trademark Trial and Appeal Board. *See* 37 C.F.R. § 2.116(a). If no Answer is timely filed by a
11 Defendant / Registrant in a Cancellation Action, the Board may render a default judgment for the
12 Petitioner. 37 C.F.R. § 2.114(a); T.B.M.P. § 508.

13 Registrant was properly served with a copy of the Petition for Cancellation in this case.
14 Walker Declaration, ¶¶ 3, 5; Exhibit 2 to Walker Declaration.

15 Registrant has not filed an Answer to the Petition for Cancellation. Walker Declaration,
16 ¶¶ 20, 21.

17 **III. CONCLUSION**

18 For the reasons set forth above, it is now appropriate for the Board to grant this Motion
19 for Default Judgment in Petitioner's favor, to hold that the mark of Registration 3,281,337 has
20 been abandoned, and to cancel Registration 3,281,337.

21 No filing fee should be required for the entry of this Motion. If any filing fee should be
22 required, the Commissioner is hereby authorized to charge any such filing fee for the filing of
23 this Motion, and credit any overpayment, to Deposit Account 23-0125.

Respectfully submitted,

LANDAU UNIFORMS, INCORPORATED,
Petitioner

Date: February 15, 2012

By: /Russell H. Walker/

COUNSEL FOR PETITIONER:

Russell H. Walker

Walker, McKenzie & Walker, P.C.
6363 Poplar Ave., Suite 402
Memphis, Tennessee 38119-4896
Tel. No. (901) 685-7428
Fax No. (901) 682-6488

Russell H. Walker
Walker, McKenzie & Walker, P.C.
6363 Poplar Ave., Suite 402
Memphis, Tennessee 38119-4896
Tel. No. (901) 685-7428, ext. 25
Fax No. (901) 682-6488
U.S.P.T.O. Registration No. 35,401
email: rwalker@walkermckenzie.com
Attorney for Petitioner

Attachment: Exhibit A:

Declaration of Russell H. Walker
Exhibits 1, 2, 3, and 4 to Declaration of Russell H. Walker

*Certificate of Mailing and of Electronic Filing
under 37 C.F.R. § 2.197 (formerly 37 C.F.R. § 1.8)*

I hereby certify that the foregoing **Petitioner's Motion for Default Judgment with Exhibit A (Declaration of Russell H. Walker with Exhibits 1, 2, 3, and 4 appended thereto)** is being electronically submitted by me via the Internet to the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office using the ESTTA Electronic Filing System on February 15, 2012, and that a copy of the foregoing **Petitioner's Motion for Default Judgment with Exhibit A (Declaration of Russell H. Walker with Exhibits 1, 2, 3, and 4 appended thereto)** is being deposited with the United States Postal Service as U.S. First Class Mail, postage prepaid, on February 15, 2012 in an envelope addressed to the last-known attorney of record for Registrant:

Rhean S. Fajardo, Esq.
Law Office of Rhean Fajardo
22 Battery St., Suite 401
San Francisco, CA 94111-5516

and that a copy of the foregoing **Petitioner's Motion for Default Judgment with Exhibit A (Declaration of Russell H. Walker with Exhibits 1, 2, 3, and 4 appended thereto)** is also being deposited with the United States Postal Service as U.S. First Class Mail, postage prepaid, on February 15, 2012 in an envelope addressed to the Registrant:

Ritche Marquez Sacilioc
12212 Otsego St.
Valley Village, CA 91607-3008

Electronic Signature of Person Transmitting: /Russell H. Walker/
Typed Name of Person Transmitting: Russell H. Walker
U.S.P.T.O. Registration No. 35,401

Electronic Signature of Person Mailing: /Russell H. Walker/
Typed Name of Person Mailing: Russell H. Walker
U.S.P.T.O. Registration No. 35,401

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

In re: Trademark Registration of Ritche Marquez Sacilioc
For the Mark: SMITTEN and design
Registration No.: 3,281,337
Registered: August 21, 2007
Int'l Class(es): 35

Landau Uniforms, Incorporated)	Attorney Docket No. B1,064
(a Tennessee corporation),)	
)	
Petitioner,)	
)	
v.)	TTAB Cancellation No. 92055022
)	
Ritche Marquez Sacilioc,)	
(a United States individual),)	
Registrant.)	

**DECLARATION OF RUSSELL H. WALKER, ESQ.,
IN SUPPORT OF
PETITIONER'S MOTION FOR DEFAULT JUDGMENT**

1 STATE OF TENNESSEE

2 COUNTY OF SHELBY

3 I, Russell H. Walker, hereby declare and state as follows:

4 1. I am an attorney with the law firm of Walker, McKenzie & Walker, P.C., counsel
5 for the above-referenced Petitioner, Landau Uniforms, Incorporated.

6 2. I have personal and first-hand knowledge of the facts set forth herein except as to
7 those matters that are stated upon information and belief, and as to those matters stated upon
8 information and belief, I believe them to be true. If called as a witness, I could and would
9 competently testify to the following.

10 3. On January 5, 2012, I deposited a first service copy of the Petition for
11 Cancellation for this action with the U.S. Postal Service, said first service copy being mailed to

1 the address of record for the Registrant of Registration 3,281,337.

2 4. Attached as Exhibit 1 hereto is a true copy of my first transmittal letter of January
3 5, 2012, that accompanied said first service copy of said Petition for Cancellation.

4 5. Attached as Exhibit 2 hereto is a true copy of a delivery confirmation email
5 received by me from the U.S. Postal Service, confirming delivery of said first service copy of
6 said Petition for Cancellation to Registrant's address on January 7, 2012.

7 6. On January 5, 2012, I also deposited a second service copy of said Petition for
8 Cancellation for this action with the U.S. Postal Service, said second service copy being mailed
9 to the address of record for Rhean S. Fajardo, Esq.

10 7. Attached as Exhibit 3 hereto is a true copy of my second transmittal letter of
11 January 5, 2012, that accompanied said second service copy of said Petition for Cancellation.

12 8. Upon information and belief, said Rhean S. Fajardo, Esq., was Registrant's
13 former attorney of record during the prosecution of Registration 3,281,337.

14 9. Attached to this Declaration at Exhibit 4 hereto is a true copy of a delivery
15 confirmation email received by me from the U.S. Postal Service, confirming delivery of said
16 second service copy of said Petition for Cancellation to the law office of said Rhean S. Fajardo,
17 Esq., on January 10, 2012.

18 10. On the afternoon of January 9, 2012, I received a telephone voice mail message
19 from a woman stating that she was Liza Sacilioc, wife of Ritche Sacilioc, and asking me to call
20 her at the telephone number of 818-371-3685.

21 11. Said Liza Sacilioc is listed as the Agent for Service of Process for Smitten
22 Corporation, California Entity Number C2643965, on the Business Entity Detail printout
23 provided as Exhibit A to said Petition for Cancellation.

24 12. Upon information and belief, and as shown on said Business Entity Detail
25 printout provided as said Exhibit A to said Petition for Cancellation, said Smitten Corporation
26 has been dissolved and is no longer in business.

27 13. Upon information and belief, said Smitten Corporation was the related company,

1 as defined by 15 U.S.C. § 1127, stated by Registrant by and through whom Registrant used the
2 mark of Registration 3,281,337.

3 14. On the afternoon of January 9, 2012, subsequent to receiving said telephone voice
4 mail message from Liza Sacilioc, I returned the call as requested to Ms. Sacilioc at the telephone
5 number of 818-371-3685 given in said telephone voice mail message.

6 15. I stated to the person who answered and who stated that she was Liza Sacilioc,
7 that I represented Petitioner Landau Uniforms, Incorporated, in this Cancellation action.

8 16. I asked Ms. Sacilioc whether she or her husband were represented by an attorney
9 concerning this matter, and was told that they were not represented by an attorney.

10 17. I informed Ms. Sacilioc that, because I did not represent her or her husband in this
11 matter, I could not advise either of them on a suggested legal course of action.

12 18. I told Ms. Sacilioc that, if the mark SMITTEN and design had not been
13 abandoned by her husband and was still in use in commerce, he should contact an attorney and
14 seek legal advice.

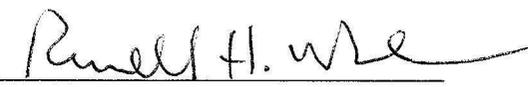
15 19. I informed Ms. Sacilioc that, if an Answer was not filed with the Board by
16 February 14, 2012, I expected that Registration 3,281,337 would be canceled.

17 20. No service copy of an Answer in this Cancellation Action has been received by
18 my office.

19 21. Upon information and belief, no Answer in this Cancellation Action has been
20 filed by Registrant with the Trademark Trial and Appeal Board.

21 I hereby declare under penalty of perjury under the laws of the United States, pursuant to
22 28 U.S.C. § 1746 and pursuant to 18 U.S.C. § 1001, that the foregoing is true and correct, and
23 that all statements made upon information and belief are believed to be true.

24 Executed this 15th day of February, 2012, at Memphis, Tennessee.

25 
26 Russell H. Walker
Russell H. Walker

*Certificate of Mailing and of Electronic Filing
under 37 C.F.R. § 2.197 (formerly 37 C.F.R. § 1.8)*

I hereby certify that the foregoing **Declaration of Russell H. Walker with Exhibits 1, 2, 3, and 4 appended thereto**, as **Exhibit A to Petitioner's Motion for Default Judgment**, is being electronically submitted by me via the Internet to the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office using the ESTTA Electronic Filing System on February 15, 2012, and that a copy of the foregoing **Declaration of Russell H. Walker with Exhibits 1, 2, 3, and 4 appended thereto**, as **Exhibit A to Petitioner's Motion for Default Judgment**, is being deposited with the United States Postal Service as U.S. First Class Mail, postage prepaid, on February 15, 2012 in an envelope addressed to the last-known attorney of record for Registrant:

Rhean S. Fajardo, Esq.
Law Office of Rhean Fajardo
22 Battery St., Suite 401
San Francisco, CA 94111-5516

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Ritche Marquez Sacilioc
12212 Otsego St.
Valley Village, CA 91607-3008

Electronic Signature of Person Transmitting: /Russell H. Walker/
Typed Name of Person Transmitting: Russell H. Walker
U.S.P.T.O. Registration No. 35,401

Electronic Signature of Person Mailing: /Russell H. Walker/
Typed Name of Person Mailing: Russell H. Walker
U.S.P.T.O. Registration No. 35,401

Exhibit 1

to

**DECLARATION OF RUSSELL H. WALKER, ESQ.,
IN SUPPORT OF
PETITIONER'S MOTION FOR DEFAULT JUDGMENT**

WALKER, MCKENZIE & WALKER, P.C.

ATTORNEYS AT LAW

6363 POPLAR AVE. SUITE 318

MEMPHIS, TENNESSEE 38119-4899

PHONE (901) 685-7428

REGISTERED
PATENT ATTORNEYS
FAX (901) 682-6488

RUSSELL H. WALKER

January 5, 2012

Ritche Marquez Saciloc
12212 Otsego St.
Valley Village, CA 91607-3008

Re: *Landau Uniforms, Incorporated v. Ritche Marquez Saciloc*
Petition to Cancel U.S. Trademark Reg. 3,281,337 for the mark Smitten & design
T.T.A.B. Cancellation Action [unknown, ESTTA449705]
Your Ref.: [unknown]
Our File No.: B1,064

Dear Mr. Saciloc:

I represent the Plaintiff / Petitioner Landau Uniforms, Incorporated ("Landau"), in trademark matters. I understand, from records at the U.S. Patent and Trademark Office, that you were previously represented by Rhean S. Fajardo, who was the attorney of record for your subject U.S. Registration 3,281,337 for the mark Smitten & design. It appears that you have abandoned this mark and that your company is no longer in business.

Because I do not know whether you are still represented by Mr. Fajardo, I have also sent him a service copy of this cancellation action as a courtesy and precaution. If you are still represented by Mr. Fajardo or another attorney in this matter, please have your attorney contact me and then I will correspond with that attorney rather than with you.

Enclosed is your service copy of the Petition for Cancellation that I filed today with the Trademark Trial and Appeal Board (the "TTAB") of the U.S. Patent and Trademark Office on behalf of Landau against your subject registration.

The statements and offers of settlement made herein are made without prejudice in compromise negotiations for settlement purposes only, in accordance with Federal Rule of Evidence 408 and comparable state rules of evidence, and are not admissible as evidence.

Yours very truly,

WALKER, MCKENZIE & WALKER, P.C.

By: 

Russell H. Walker

RHW/rw

enclosures

cc: Rhean S. Fajardo, Esq.

Exhibit 2

to

**DECLARATION OF RUSSELL H. WALKER, ESQ.,
IN SUPPORT OF
PETITIONER'S MOTION FOR DEFAULT JUDGMENT**

From: "U.S. Postal Service_" <U.S. Postal_Service@usps.com>
Subject: **USPS Shipment Info for 9405 5036 9930 0364 5910 14**
Date: January 7, 2012 7:16:16 PM CST
To: rwalker@walkermckenzie.com

This is a post-only message. Please do not respond.

RUSSELL H WALKER has requested that you receive a Track & Confirm update, as shown below.

Track & Confirm e-mail update information provided by the U.S. Postal Service.

Label Number: 9405 5036 9930 0364 5910 14

Service Type: Priority Mail Delivery Confirmation

Shipment Activity	Location	Date & Time
Delivered	VALLEY VILLAGE CA 91607	01/07/12 3:14pm
Arrival at Post Office	NORTH HOLLYWOOD CA 91605	01/07/12 6:26am
Depart USPS Sort Facility	SANTA CLARITA CA 91383	01/07/12
Processed through USPS Sort Facility	SANTA CLARITA CA 91383	01/07/12 3:13am
Depart USPS Sort Facility	38199	01/06/12
Processed at USPS Origin Sort Facility	38199	01/06/12 12:00am
Accepted at USPS Origin Sort Facility	MEMPHIS TN 38119	01/05/12 10:45pm
Electronic Shipping Info Received		01/05/12

Reminder: Track & Confirm by email

Date of email request: 01/05/12

Future activity will continue to be emailed for up to 2 weeks from the Date of Request shown above. If you need to initiate the Track & Confirm by email process again at the end of the 2 weeks, please do so at the USPS Track & Confirm web site at <http://www.usps.com/shipping/trackandconfirm.htm>

USPS has not verified the validity of any email addresses submitted via its online Track & Confirm tool.

For more information, or if you have additional questions on Track & Confirm services and features, please visit the Frequently Asked Questions (FAQs) section of our Track & Confirm site at <http://www.usps.com/shipping/trackandconfirmfaqs.htm>

Exhibit 3

to

**DECLARATION OF RUSSELL H. WALKER, ESQ.,
IN SUPPORT OF
PETITIONER'S MOTION FOR DEFAULT JUDGMENT**

WALKER, MCKENZIE & WALKER, P.C.

ATTORNEYS AT LAW

6363 POPLAR AVE. SUITE 318

MEMPHIS, TENNESSEE 38119-4899

PHONE (901) 685-7428

REGISTERED
PATENT ATTORNEYS
FAX (901) 682-6488

RUSSELL H. WALKER

January 5, 2012

Rhean S. Fajardo, Esq.
Law Office of Rhean Fajardo
22 Battery St., Suite 401
San Francisco, CA 94111-5516

Re: *Landau Uniforms, Incorporated v. Ritche Marquez Saciloc*
Petition to Cancel U.S. Trademark Reg. 3,281,337 for the mark Smitten & design
T.T.A.B. Cancellation Action [unknown, ESTTA449705]
Your Ref.: [unknown]
Our File No.: B1,064

Dear Mr. Fajardo:

I represent the Plaintiff / Petitioner Landau Uniforms, Incorporated ("Landau"), in trademark matters. I understand, from records at the U.S. Patent and Trademark Office, that you previously represented Ritche Marquez Saciloc, a U.S. citizen and individual, and that you were the attorney of record for his subject U.S. Registration 3,281,337 for the mark Smitten & design. It appears that he has abandoned this mark and that his company is no longer in business.

Because I do not know whether you still represent Mr. Saciloc, I am providing service of this cancellation action both to you and to him.

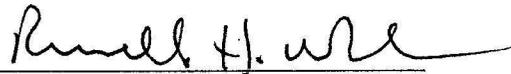
Enclosed is your service copy of the Petition for Cancellation that I filed today with the Trademark Trial and Appeal Board (the "TTAB") of the U.S. Patent and Trademark Office on behalf of Landau against your client's subject registration.

The statements and offers of settlement made herein are made without prejudice in compromise negotiations for settlement purposes only, in accordance with Federal Rule of Evidence 408 and comparable state rules of evidence, and are not admissible as evidence.

Yours very truly,

WALKER, MCKENZIE & WALKER, P.C.

By:



Russell H. Walker

RHW/rw

enclosure

cc: Ritche Marquez Saciloc

Exhibit 4

to

**DECLARATION OF RUSSELL H. WALKER, ESQ.,
IN SUPPORT OF
PETITIONER'S MOTION FOR DEFAULT JUDGMENT**

From: "U.S._Postal_Service_" <U.S._Postal_Service@usps.com>
Subject: **USPS Shipment Info for 9405 5036 9930 0364 6148 74**
Date: January 11, 2012 7:38:29 PM CST
To: RWALKER@WALKERMCKENZIE.COM

This is a post-only message. Please do not respond.

RUSSELL WALKER has requested that you receive the current Track & Confirm information, as shown below.

Current Track & Confirm e-mail information provided by the U.S. Postal Service.

Label Number: 9405 5036 9930 0364 6148 74

Shipment Activity	Location	Date & Time
Delivered	SAN FRANCISCO CA 94111	01/10/12 12:49pm
Out for Delivery	SAN FRANCISCO CA 94105	01/07/12 10:45am
Sorting Complete	SAN FRANCISCO CA 94105	01/07/12 10:35am
Notice Left (Business Closed)	SAN FRANCISCO CA 94111	01/07/12 8:42am
Arrival at Post Office	SAN FRANCISCO CA 94105	01/07/12 6:29am
Processed through USPS Sort Facility	SAN FRANCISCO CA 94188	01/07/12 12:34am
Processed through USPS Sort Facility	SAN FRANCISCO CA 94188	01/06/12 10:03pm
Processed at USPS Origin Sort Facility	38199	01/05/12 11:28pm
Accepted at USPS Origin Sort Facility	MEMPHIS TN 38119	01/05/12 10:13pm
Electronic Shipping Info Received		01/05/12

USPS has not verified the validity of any email addresses submitted via its online Track & Confirm tool.

For more information, or if you have additional questions on Track & Confirm services and features, please visit the Frequently Asked Questions (FAQs) section of our Track & Confirm site at <http://www.usps.com/shipping/trackandconfirmfaqs.htm>