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

Proceeding	92055585
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MeUndies, Inc.

Petitioner,

v.

Drew Massey dba myUndies Inc.

Registrant

Mark: MYUNDIES

Cancellation. No. 92055585

**OPPOSITION TO MOTION TO DISMISS UNDER RULE 12(b)(6)
AND CROSS-MOTION FOR SUMMARY JUDGMENT**

Registrant Drew Massey DBA Myundies Inc has filed two copies of the identical pleading, one as an Answer and the other as a Motion to Dismiss under Fed. R. Civ. P. 12(b), ostensibly for failure to "make a valid claim as the registered mark is not abandoned and is used exactly as registered." Having Answered, Registrant waived his right to move to dismiss in accordance with Fed. R. Civ. P. 12(b)(7). Nonetheless, responding to the Motion without waiving its challenge, Petitioner points out that, in support of its claim of current use, Registrant has produced only the same specimen filed with the original application more than three years ago, and other purported evidence of use that fails show use sufficient to support registration under the Lanham Act.

Now comes Petitioner in opposition to the Motion to Dismiss and with its own Motion for Judgment on the Pleadings under Rule 12(c). Petitioner's extensive pre-filing investigation that did not reveal any current use of the subject mark by Registrant, coupled with Registrant's failure to provide evidence of any use other than the specimens of record in the registration, demonstrate that Registrant is no longer using the mark in a manner sufficient to support federal registration, and thus militate against granting Registrant's Motion to Dismiss and provide grounds to support Petitioner's Motion for Judgment. Petitioner's Motion is well founded in light of the Registrant's arguments, allegations and evidence in the file history and pleadings. The registration is invalid because, *inter alia*:

- Registrant has no evidence of use in commerce in the past three years since registration was granted;
- The evidence of use filed in the application is dated eight years before it was filed and is thus not timely;

- The evidence of use filed in the application and in the pleadings comprises photographs of a single product sample in both instances, three years apart, and therefore does not support use during the relevant period;
- Registrant's other photographs do not display the subject goods bearing the mark and are not evidence of use;
- Registrant's purported evidence of online presence is not a bona fide point-of-purchase, and is not evidence of use;
- Registrant's hang-tags display a URL domain name associated with the mark that is not owned and/or operated by or on behalf of Registrant, proving that the evidence is bogus; and
- Registrant has not used the mark in connection with the goods set forth in the declarations in its application, therefore the application is void *ab initio*.

Because Registrant has relied only on the examples of use provided in the Exhibits to its Motion, which include an image first filed in the application in early 2009, to support its argument that the Petition should be dismissed at the pleading stage because the mark "is used", judgment on the pleadings is appropriate. Petitioner submits that the use does not satisfy requirements for registration, therefore the Petition should be granted and the registration cancelled.

FACTUAL BACKGROUND

On October 22, 2008, Registrant filed an application to register the mark MYUNDIES in connection with "Clothing, namely, underwear; boxers, briefs, panties, thongs, bras, sleepwear, loungewear, shirts, shorts, jeans, pants, socks, and hats", claiming use since at least as early as 1999, and use in commerce since at least as early as January 1, 2000. The registration was granted on September 29, 2009 and given United States Reg. No. 3,677,473.

Registrant's application was filed on an in-use basis but did not file a specimen of use with the initial application, or the specimen was lost in transmission of the application. In response to an Office Action, Registrant submitted a specimen of use comprising a photograph of a pair of men's boxer shorts displaying the mark on the inside waistband, a tag on the outside front of the waistband, and a hangtag attached to the garment. Registrant also submitted a specimen displaying an online discussion forum posting from June 16, 2000 noting that "Free boxers just for registering" were available at Registrant's "MyUndies.com" web site.

Petitioner is desirous of using the mark MEUNDIES.COM in connection with apparel goods and related retail services. Pursuant to the commencement of its business, Petitioner undertook an investigation to determine the existence, nature and scope of any third-party use of marks similar to Petitioner's proposed mark. Sapphire Decl., 2. Petitioner's investigation prior to filing its application for the MEUNDIES.COM mark included a review of retailers, apparel manufacturing directories, and Internet resources. *Id.* The pre-filing investigation did not uncover any evidence of use of the mark MYUNDIES or MY UNDIES by Registrant. *Id.* at 3.

The '473 Reg. was cited as the basis of refusal of registration of Petitioner's pending application to register its proposed mark. In order to determine the best course of action in response thereto, Petitioner conducted further investigation of on- and off-line apparel retailers to determine the extent of Registrant's mark's market presence. Sapphire Decl., 4. Petitioner also investigated Registrant's use of any domain names, web sites, and the like in connection with direct sales by Registrant or its affiliates. Id. None of the foregoing avenues of investigation were fruitful in revealing any commercial presence of the subject mark. Id.

Petitioner has found no evidence of retail presence of Registrant's purported goods bearing the MYUNDIES mark, either as presented in the specimens on hangtags or otherwise, in stores or on the Internet. Id. Additionally, neither the "MYUNDIES.COM" (which appears on Registrant's specimens of use) and "MYUNDIES.NET" domain names are registered in the name of Registrant, nor are they operated on Registrant's behalf. Sapphire Decl., 5. Both domain names are registered in the name of different third-parties. Id. They are being used in connection with web pages featuring advertising links to third-party web sites. Id. There is no dedicated currently-operating web site featuring MYUNDIES goods being operated by Registrant or on Registrant's behalf. Id. In light of the evidence revealed pursuant to its extensive investigation, Petitioner concluded in good faith that Registrant either never launched the business associated with the mark, or abandoned the mark and the business associated therewith, and accordingly Petitioner filed the instant Petition in order to remove the bar to registration of MEUNDIES.COM. Id. at 6.

Registrant falsely responded to the Petition with claims that the registrant's mark "is used exactly as registered". Registrant's Motion/Answer contains additional irrelevant claims including the argument that Petitioner's mere act of filing a Petition to Cancel comprises "unethical legal activity by the Petitioner's counsel"; and that Petitioner is attempting "to steal a legal trademark". Registrant further claims that through the instant Petition, "Petitioner is causing harm to legally owned registrant [sic]... by making false allegations and causing duress on registrant by filing a fraudulent cancellation petition" and requests relief from "15 months of extraordinary proceedings and costs."

In support of its claim of use, Registrant has produced an image of what appears to be the identical pair of its boxer shorts that appears in the 2009 specimen filing in the file history. Registrant has also produced photographs of what appear to be boxer shorts in other colors, although none of those garments display the subject mark and are thus not evidence of use. The foregoing photographs comprise an exhibit entitled "Samples Produced".

In addition, Registrant has produced an image of what it claims is a "Store/App/Marketing", purporting to be a screenshot of Registrant's retail operation in connection with underwear sold under the subject mark. However, the exhibit is not a screenshot, as it shows no evidence that it was taken from a browser/computer network. It is not a point-of-purchase and bears none of the required hallmarks of a point-of-purchase site as discussed in the Trademark Rules of Examining Procedure, and is therefore also not evidence of use.

Registrant effectively concedes the absence of any additional evidence than that discussed above, in vigorously arguing that the evidence of record suffices to demonstrate use in commerce by Registrant that will support the continued registration of its subject mark. Petitioner maintains that the evidence demonstrates that Registrant's use is at best token, and at worst merely to reserve the mark, in either case not sufficient to support federal registration, and that the '473 Reg. is therefore void *ab initio*. Further, by failing to demonstrate any manner of commercial use since the March 2009 specimen was originally filed, the Registrant has abandoned the mark; and finally, since Registrant has apparently abandoned and/or let lapse its online presence, Registrant's abandonment is without intent to resume use, therefore the Registration should be cancelled.

ARGUMENT

Summary judgement is appropriate where there are no genuine issues of material fact in dispute, thus allowing the case to be resolved as a matter of law. Fed. R. Civ. P.56(c). The party seeking summary judgment bears the initial burden of demonstrating the absence of any genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A factual dispute is genuine if, on the evidence of record, a reasonable fact finder could resolve the matter in favor of the non-moving party. *See Opryland USA Inc. v. Great American Music Show Inc.*, 23 U.S.P.Q. 2d 1471, 1472 (Fed. Cir. 1992).

It is clear that the subject mark of the '473 Reg. is not in use in any more than a token capacity, if that. The mark appears never to have been used "in commerce" in the manner understood as sufficient to support federal registration of a trademark under the Lanham Act, and certainly is not now in such use. The instant Petition was filed on a good-faith basis, after review of Petitioner's investigation results and the file history for the '473 Reg., and for that reason, Registrant's specious Motion to Dismiss, if considered, should be denied.

By the same token, Registrant has vigorously argued that the evidence of record is sufficient proof of its claim that the '473 Reg. is valid. On that evidence, Petitioner's Motion for Summary Judgment should be granted.

1. The Motion to Dismiss Should be Denied and the Motion for Summary Judgment Should be Granted Because Registrant Has Failed to Demonstrate that the Mark is in Use or that Registrant's Use is More than Merely Token: The Mark has Not Been Used and is Therefore Abandoned.

For a defendant to prevail on a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6), it must appear beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993). The purpose of a motion under Federal Rule 12(b)(6) is to test the formal sufficiency of the statement of the claim for relief in the

complaint. *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987). It is not a procedure for resolving a contest about the facts or the merits of the case. In reviewing the sufficiency of the complaint, the issue is not whether the plaintiff will ultimately prevail but whether the plaintiff is entitled to offer evidence to support the claims asserted. *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974). Since the motion raises only an issue of law, the court has no discretion as to whether to dismiss a complaint that it determines to be formally insufficient. *Yuba Consolidated Gold Fields v. Kilkeary*, 206 F.2d 884, 889 (9th Cir. 1953).

Petitioner has brought forth a formally sufficient statement of the claim for relief, namely, cancellation of the subject registration, alleging among other things non-use and abandonment of the mark by the Registrant. There is no basis of support for Registrant's facile and meritless Motion. Indeed, Registrant does not even try to make an argument that the Petition is formally insufficient, having instead filed an Answer and thereby rendering the Motion moot. "A motion asserting any of the defenses identified in Rule 12(b) must be made before pleading." Fed. R. Civ. P. 12(b)(7). Because the Motion was filed simultaneously with and in a form identical to Registrant's Answer, it is therefore also untimely, and Registrant's Motion to Dismiss should not be granted.

A. The Evidence of Record Does Not Rebut the Presumptions of Nonuse and/or Abandonment.

Under Section 45 of the Lanham Act, a mark shall be deemed to be abandoned "[w]hen its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for three consecutive years shall be prima facie abandonment." 15 U.S.C. Sec. 1127. See also *Imperial Tobacco Ltd. v. Philip Morris, Inc.*, 14 U.S.P.Q.2d 1390 (Fed. Cir. 1990). Here, Registrant has not demonstrated any use of the subject mark in connection with the vast majority of its listed goods. At the same time, the purported evidence of use that it has produced for boxer shorts is inapposite and therefore fails to demonstrate use of the mark in the three years since registration. In the absence of additional evidence of use, three-year-old and twelve-year-old specimens of use are insufficient to overcome a presumption of abandonment that arises in marks that have not been used for three years or more. See, e.g., *ITC Ltd. v. Punchgini, Inc.*, 482 F.3d 135 (2d Cir. 2007), cert. denied 552 U.S. 827 (2007). The Registrant has not provided any evidence of nonabandonment of the subject mark of the '473 Reg. but only unsubstantiated self-serving statements. Indeed, it has provided only a single specimen -- a photo of what is apparently the same yellow-beige pair of boxer shorts photographed as a specimen and filed in the application in 2009 -- in support of its Motion to Dismiss. It purports to have additional evidence of use in its pleadings and file history; however, other than the foregoing aged specimen, the materials comprising Registrant's Exhibits and other specimen in the file history are not of themselves evidence of use, since none of them bear the mark or comprise point-of-purchase displays, and must therefore be excluded from consideration in the use analysis.

Registrant's second specimen, which was also submitted in 2009, is a screenshot of a comment in an online discussion forum, informing forum readers that MyUndies.com is providing free boxers for "joining", with a link to the URL "myundies.com". As shown in the specimen, the forum comment was made in the year 2000. Since it is twelve years old, it fails as timely evidence of use in the context of the instant Motions, since it falls far outside the relevant time period. Indeed, as discussed infra., the specimen's age relative to the original filing date -- eight years' difference -- is such that it is inadequate evidence of use of the mark as of the filing date of the application.

In its Exhibits to the Motion/Answer, Registrant has provided additional photographs of boxer shorts, labeled "Samples Produced". One pair, in white, does not visibly bear the subject mark and is therefore not evidence of use. A beige/yellow pair -- which appears to be the same pair used in the 2009 specimen -- is photographed twice, once with and once without flash to appear both beige and yellow. A third photograph depicts a pair of boxers that does not visibly bear the subject mark, and is therefore likewise nonfunctional as evidence of use. In its exhibit, Registrant specifically admits that the goods depicted are "Samples" it has produced. The fact that only one pair of the two or three comprising the garments depicted in the four photographs of record actually visibly bears the subject mark supports the conclusion that Registrant has only produced a single sample bearing the mark.

The "use" necessary to support federal registration of a trademark is use in the "ordinary course of trade", not just token use. McCarthy on Trademarks, Sec. 19:109. Without use, there is no "trademark" to be recorded on the federal register of marks. *Id.* Section 45 of the Lanham Act defines "use in commerce" as meaning the "bona fide use of a mark in the ordinary course of trade, and not merely to reserve a right in a mark." *Id.* The foregoing definition of "use in commerce" is consistent with the House Judiciary Committee's intention to eliminate the practice of making a single shipment "token use" solely for the purpose of reserving a mark. House Judiciary Cmte. Rpt. on H.R. 5372, H.R. No. 100-1028, p.15 (Oct. 3, 1988). "The legislative history of the Trademark Law Revision Act reveals that the purpose of the amendment was to eliminate 'token use' as a basis for registration, and that the new, stricter standard contemplates instead commercial use of the type common to the particular industry in question. *Paramount Pictures Corp. v. White*, 31 U.S.P.Q.2d 1768, 1774 (T.T.A.B. 1994)(where a game was distributed on a less-than-commercial scale at a de minimis volume to promote a musical group, the mark was not registrable). The production of "samples" as Registrant has made does not constitute "the bona fide use of a mark in the ordinary course of trade"; rather, it seems precisely calculated "merely to reserve a right in the mark," which is insufficient as noted above.

Finally, notwithstanding that it does not have an operational web site and it no longer owns the MYUNDIES.COM or MYUNDIES.NET domain names, Registrant provides an altered graphic captioned "myUNDIES Store/App/Marketing" that purports to be its online retail portal for Registrant's merchandise. The graphic is roughly square, bearing the subject mark in the upper-left corner, over a photograph of a couple wearing their underwear in what appears to be a living room. In the foreground of the photograph, a wrinkled garment is strewn over a piece of

furniture, and appears to bear the Registrant's stylized representation of the subject mark down its front. However, upon closer inspection, the logo is revealed to be in reverse-type, and more significantly, the logo does not follow the wrinkles of the garment -- it is straight as if it had been overlaid on the photograph via computer-aided manipulation, not printed on the garment itself. As with the boxer shorts that do not display the mark, here, the garment in the photograph is obviously edited to appear to bear the mark but clearly does not, so it does not function as evidence of use of the mark on apparel.

More significantly, the "Store/App/Marketing" graphic does not comprise a display associated with goods. In *In re Columbia Chase Corp.*, 215 U.S.P.Q. 478 (T.T.A.B. 1982), the Board found that folders and brochures describing goods and their characteristics or serving as advertising literature are not displays, and the appearance of marks and product photographs in such literature does not per se amount to use of a mark on displays without evidence of point-of-sale presentation. Moreover, "The use of advertising material in connection with the sales of a product does not ipso facto make it a display used in association with the goods sufficient to support technical trademark use for registration." In *re Osterberg*, 83 U.S.P.Q.2d 1220 (T.T.A.B. 2007); see also *In re Anpath Group, Inc.*, 95 U.S.P.Q.2d 1377 (T.T.A.B. 2010) (holding that a pamphlet and flyer listing the URL of applicant's website and/or a telephone number for contacting sales representatives does not create the same point-of-sale situation as a detailed catalogue, a detailed web page, or a situation where there is the option of placing an order based upon detailed information from the specimen). Further, Registrant claims that it "is developing" electronic storefronts for use in connection with the mark. However, Registrant does not have an operational web site and has not had one for a substantial period. *Sapphire Decl.*, 5. While Registrant's purported website development efforts may constitute prospective use, they necessarily fall short of "use in commerce". Registrant's use of the "Store/App/Marketing" graphic to support its claim of use is thus legally insufficient and should not be considered.

Registrant makes the unsubstantiated claim that its mark is "used exactly as registered" and has presented as evidence of use the same sample-specimen that was used in the original application in 2009, prior to registration. The evidence of record is purported to be sufficient to support Registrant's claims that the mark is still in use and the registration is valid. However, "[t]rademark rights flow from use, not from intent to protect rights. Were the rule otherwise, a party could hold trademarks that it never intended to use but did not want to allow others to use. The Lanham Act does not permit such warehousing of trademarks." *AmBrit, Inc. v. Kraft, Inc.*, 1 U.S.P.Q.2d 1161 (11th Cir. 1986), cert. denied, 481 U.S. 1041 (1987). Registrant has only demonstrated that the specimens of use filed in 2009 were insufficient to support registration, and thus use "exactly as registered" would be likewise insufficient to support the continued registration of the mark. Moreover, although the registration covers a range of garments, Registrant has only ever purported to show boxer shorts bearing the mark, thus conceding that the mark has not been and/or is not in use in connection with the other goods identified in the registration. Had there been substantive use of the mark since the grant of registration, it would have been reasonable for Registrant to have bombarded the Board with evidence in support of its Motion. The absence of anything more than a new photograph of old sample and gratuitous,

unsupported self-serving statements lends support to the inference that Registrant is merely "warehousing" the trademark, and not using it in a manner that supports federal registration.

By Registrant's complete lack of any support for its claimed use of the mark it is clear that Registrant has no further support to deny summary adjudication, therefore Petitioner's Motion is appropriate. Petitioner maintains that the evidence demonstrates that to the extent there has been any since the grant of registration, Registrant's use is at best token, and at worst merely to reserve the mark. In either case, Registrant has failed to overcome the presumption of abandonment and the registration should therefore be cancelled.

2. Registrant's Non-Use of the Registered Mark is Not Excusable.

Registrant has produced no evidence that its subject goods have been sold or shipped in interstate commerce. All it has produced is a few photographs of what is apparently a single mark-bearing specimen of use comprising a merchandise "Sample" produced for Registrant more than three years ago. The other evidence purporting to show use in commerce is inapposite, comprising either photos of boxer shorts devoid of any markings, or a non-commercial graphic image bearing a photograph with the subject mark post-edited onto the garment depicted in the image. According to the hangtag on the specimen filed in 2009 and of record in the subject Registration, Registrant appears to have operated or planned to operate a web site at "MYUNDIES.COM". However, contrary to Registrant's assertions, that domain name is registered in the name of a competing third-party, giving rise to a presumption that Registrant had no intent to commence use or resume use (if one assumes Registrant ever operated the purported site) and allowed it to lapse (if it ever owned the domain name in the first place).

To establish that it had or has maintained an intent to resume use of the mark during the period of nonuse, the Registrant "must come forward with evidence beyond mere conclusory statements or denials that it lacks such intent to resume use. See *Rivard v. Linville*, 45 U.S.P.Q.2d 1374 (Fed. Cir. 1998). Based on the evidence, there is no dispute that Registrant has not used the mark in commerce in connection with the goods identified in the registration during the time period from the date the specimen was filed in the application on March 30, 2009 until the date the instant Petition was filed. Registrant has certainly not demonstrated and cannot demonstrate use in connection with any goods in the registration other than the token pair of boxer shorts depicted in the specimen and "Samples Produced" exhibit to Registrant's Motion. Registrant's other evidence is either not demonstrative of use of the mark in commerce or is outside the relevant time period. Therefore, it does not function as evidence of Registrant's use of the mark. Registrant's declaratory statements in its pleadings are not supported by evidence during the relevant time period and, at most can be viewed simply as conclusory statements of a general desire to use the mark, which are not sufficient to rebut the prima facie case of abandonment. *Imperial Tobacco Ltd. v. Philip Morris, Inc.*, 14 U.S.P.Q.2d 1390 (Fed. Cir. 1990) ("Nothing in the statute entitles a registrant who has formerly used a mark to overcome a presumption of abandonment arising from subsequent nonuse by simply averting a subjective affirmative 'intent not to abandon'. ...the Lanham Act was not intended to provide a warehouse for unused marks.").

Petitioner's claim of abandonment and its argument that Registrant has not used the mark in commerce in a manner sufficient to support registration under the Lanham Act are closely related. The Board has held that "the determination of whether an applicant has a bona fide intention to use the mark in commerce is to be a fair, objective determination based on all the circumstances." *Lane Ltd. v. Jackson International Trading Co.*, 33 U.S.P.Q.2d 1351, 1355 (T.T.A.B. 1994). The Board also has stated that the requirement that an applicant must have a bona fide intent to use the mark in commerce "must be read in conjunction with the revised definition of 'use in commerce' in Section 45 of the Trademark Act, which the Trademark Law Revision Act of 1988 amended to require that such use be 'in the ordinary course of trade, and not made merely to reserve a right in a mark.'" *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503, 1507 (T.T.A.B. 1993). An "applicant's mere statement of subjective intention, without more, would be insufficient to establish applicant's bona fide intention to use the mark in commerce." *Land Ltd.* 33 U.S.P.Q.2d at 1355. The absence of any documentary evidence on the part of an applicant regarding such intent constitutes objective proof sufficient to establish that the applicant lacks a bona fide intention to use its mark in commerce. See *Id.*; *Boston Red Sox Baseball Club LP v. Sherman*, 88 U.S.P.Q.2d 1581, 1587 (T.T.A.B. 2008).

As discussed above, the only documentary evidence regarding its intent to use its mark on the range of apparel goods set forth in the registration in the United States consists of the comment in an online forum offering a giveaway of free boxer shorts in 2000 for "joining", and the sewn-on labels on one or at best a de minimis quantity of garment samples. The online forum comment from 2000 cannot be considered reasonably contemporaneous with the filing date of the application eight years later on October 22, 2008. There is no documentary evidence regarding any attempts or efforts to distribute and sell in the time period before or after the filing of the application. Registrant therefore clearly did not have a bona fide intention to use its applied-for mark on or in connection with "Clothing, namely, underwear; boxers, briefs, panties, thongs, bras, sleepwear, loungewear, shirts, shorts, jeans, pants, socks, and hats". Registrant has produced nothing which would adequately explain or outweigh its failure to provide any documentary evidence past 2000 supporting a finding of any attempts to market the subject goods, and Registrant's allegations in its Answer and Motion are merely self-serving conclusory statements and do not provide sufficient support to show a bona fide intent to use the mark in commerce. In short, there is nothing to support a bona fide intent to use the mark in the United States, since 2000, and the Petition on the ground that Registrant has abandoned without intent to resume use the mark in the '473 Reg. should be sustained.

3. Registrant's Nonuse of the Mark at the Time of Filing Renders the Application/Registration Void *ab initio*.

On information and belief, including the evidence in the record, Registrant is not now using and never has used the MYUNDIES mark on or in connection with each item recited in the underlying application. Notwithstanding whether the sample pair of boxers bearing the mark suffice as evidence of use, Registrant cannot demonstrate use in connection with the remaining goods in the registration, namely, "Clothing, namely, underwear; briefs, panties, thongs, bras,

sleepwear, loungewear, shirts, shorts, jeans, pants, socks, and hats". Likewise, Registrant falsely alleged in its declarations in support of its application that the mark was in use on all of the recited goods, and Registrant knew at the time it submitted the Application and attendant declarations therein that the recitation of use of the mark for the goods in its application were false. The USPTO issued the subject registration pursuant to the declarations that these statements were true, which was material to the grant of the registration. Therefore, Registrant procured the registration by false means and/or by knowingly making false declarations or representations to the USPTO including false allegations in a declaration that Registrant used the mark in connection with the recited goods when it did not use the mark on all recited goods at the time of the application. As addressed above, there is no evidence to corroborate Registrant's claims that it used the mark in commerce in connection with any of the goods. Therefore, the Board should determine that the application was void *ab initio*, as argued above.

The law is clear that an application can be held void if the plaintiff pleads and proves either fraud or nonuse of a mark for all identified goods or services prior to the application filing date. *Grand Canyon West Ranch LLC v. Hualapai Tribe*, 78 U.S.P.Q.2d 1696, 1697 (T.T.A.B. 2006) *Cf. Wet Seal Inc. v. FD Management Inc.*, 82 U.S.P.Q.2d 1629 (T.T.A.B. 2007) ("an application will not be deemed void for lack of a bona fide intention to use absent proof of fraud, or proof of a lack of bona fide intention to use the mark on all the goods identified in the application."). The Board has found applications to be void *ab initio* even when nonuse was not pleaded as a separate claim or issue, and where fraudulent intent was not conclusively proven. *See CPC International Inc. v. Skippy Inc.*, 3 U.S.P.Q.2d 1456, 1460 (T.T.A.B. 1987) (though panel found evidence of fraudulent intent lacking, it nonetheless concluded "there is no doubt whatsoever that the marks were not in use on the indicated services as of the filing dates of the applications and . . . the specimens of record do not demonstrate any such use on or prior to the filing dates. Accordingly, both applications are void *ab initio*"). In this case, the issue of nonuse / abandonment by Registrant was set out in the Petition for Cancellation. The record supports the conclusion that Registrant's mark was not in use at the time of filing of his application, therefore the application should be held void *ab initio*. *See ShutEmDown Sports, Inc. v. Carl Dean Lacy*, Cancellation No. 92049692 (T.T.A.B. 2012).

CONCLUSION

In light of the foregoing, Registrant's Motion to Dismiss is plainly without merit and should not be granted. Petitioner respectfully requests the Motion thus be denied. Such use as demonstrated in Registrant's evidence is not sufficient to establish use as a basis for an application to register or, by extension, for a registration to be considered subsisting in good standing. Registrant has failed to demonstrate that the mark is in use, or that it has ever been in use during the period of registration, and its conduct as evidenced by the record fails to overcome the presumption that the mark has been abandoned if the application is not found to be void *ab initio*. Registrant does not require time for discovery to demonstrate the sufficiency of its own use of the subject mark, therefore in the absence of valid evidence to the contrary,

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Petitioner's Motion for Summary Judgment should be granted and the subject registration should be cancelled. Such action is respectfully requested.

Dated: May 25, 2012

By: _____/s/_____
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INC.

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DECLARATION OF VICTOR SAPHIRE

1. I, Victor K. Sapphire, am attorney of record for Petitioner in the instant proceeding and have long represented Petitioner in connection with its intellectual property matters, and am responsible for prosecuting the Petition for Cancellation on Petitioner's behalf. I have direct knowledge of the matters discussed herein.
2. Prior to filing Petitioner's application to register the mark MEUNDIES.COM, I conducted extensive investigation for identical and similar marks, including reviewing trade periodicals, directories and Internet-based research. If similar marks were found, the second stage of investigation involved factfinding sufficient to support a determination (a) whether the mark was in use, (b) the nature of the use, and (c) the scope of the use, in order to assess the risk of objection.
3. The pre-filing investigation did not uncover any evidence of use of the Registrant or its MYUNDIES / MY UNDIES mark.
4. Petitioner's application had cited against it in the first Office Action the registered mark that is the subject of the instant Petition. In addition to my further investigation, Petitioner also conducted investigation of apparel retailers and other resources to determine the extent, if any, of Registrant's use of the subject mark. I also investigated Registrant's use and registration of any relevant domain names, web sites, and the like, to confirm whether Registrant was conducting any online retail sales business for apparel in connection with the subject mark. None of our extensive investigative efforts yielded any evidence of past or present commercial presence of the subject mark, and no evidence of use was revealed.
5. My domain name investigation revealed registrations for MYUNDIES.COM and MYUNDIES.NET. MYUNDIES.COM was printed on the hangtag attached to the sample photographed and filed as a specimen of use in the Registrant's file history. However,

neither of the MYUNDIES domain names are in use in connection with operational web sites related to the mark or subject goods. Rather, both of them are being used in connection with web pages featuring advertising links to third-party web sites. Moreover, MYUNDIES.COM and MYUNDIES.NET are not even any longer owned by Registrant; the former is registered in the name of Marchex Sales, Inc. of Las Vegas, Nevada, and the latter in the name of Michael Kleinert of Long Beach, New York. The investigation did not reveal any dedicated currently-operating web site featuring Registrant's MYUNDIES mark and/or goods, operated either by Registrant or on its behalf.

6. Based on the foregoing investigation results, I and Petitioner concluded that the Registrant had either never launched the business associated with the mark beyond having samples made for specimen submission, or that the business was no longer a going concern. For that reason, Petitioner filed the instant Petition, in order to remove the bar to registration of Petitioner's mark.
7. The undersigned hereby declares and states that the facts set forth in this Declaration are true; that all statements made herein of the undersigned's own knowledge are true; that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom.

Dated: May 25, 2012

By:



Victor K. Sapphire, Esq.
Connolly Bove Lodge & Hutz LLP
333 S Grand Avenue, Suite 2300
Los Angeles CA 90071
(213) 787-2523

myundies.com

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Official site. Game for Windows, Linux, and BeOS in which the pla...
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Project details for the game.
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NS History: [1 change](#) on 2 unique name servers over 10 years.

IP History: [23 changes](#) on 16 unique IP addresses over 8 years.

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Domain name: myundies.com

Administrative Contact:
 Marchex Sales, Inc
 Brendhan Hight (dnsadmin@mdnhinc.com)
 +1.7022275569
 Fax:
 6700 Via Austi Parkway
 Suite D
 Las Vegas, NV 89119
 US

Technical Contact:
 Marchex Sales, Inc
 Brendhan Hight (dnsadmin@mdnhinc.com)
 +1.7022275569
 Fax:
 6700 Via Austi Parkway
 Suite D
 Las Vegas, NV 89119
 US

Registrant Contact:
 Marchex Sales, Inc
 Brendhan Hight ()
 Fax:
 6700 Via Austi Parkway
 Suite D
 Las Vegas, NV 89119
 US

Status: Locked

Name Servers:
 A.NS.ULTSEARCH.COM
 B.NS.ULTSEARCH.COM

Creation date: 27 Mar 2002 19:08:00
Expiration date: 27 Mar 2013 18:08:00

[Backorder This Domain](#)



Country TLDs General TLDs

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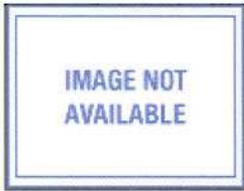
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BOOKMARK

Current Registrar: ENOM, INC.

IP Address: [173.212.56.200](#) (ARIN & RIPE IP search)

Record Type: Domain Name

Server Type: Apache 2

Lock Status: clientTransferProhibited

WebSite Status: Active

=====

Visit [AboutUs.org](http://www.aboutus.org) for more information about MYUNDIES.NET
[AboutUs: MYUNDIES.NET](http://www.aboutus.org/MYUNDIES.NET)

Domain name: MYUNDIES.NET

Registrant Contact:

NA
 The data in Bulkregister.com's WHOIS database is p ()

Fax:
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 obtaining information about or related to a domain name regi
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 ou

Administrative Contact:

Michael Kleinert
 Michael Kleinert (domain@centralstation.com)

+1.8772785972
Fax:
21 Arizona Avenue #102
Long Beach, NY 11561-1501
US

Technical Contact:
Michael Kleinert
Michael Kleinert (domain@centralstation.com)
+1.8772785972
Fax:
21 Arizona Avenue #102
Long Beach, NY 11561-1501
US

Status: Locked

Name Servers:
ns1.voodoo.com
ns2.voodoo.com

Creation date: 28 Dec 2001 03:00:44
Expiration date: 28 Dec 2012 03:00:00

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The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the OPPOSITION TO MOTION TO DISMISS UNDER RULE 12(b)(6) AND CROSS-MOTION FOR SUMMARY JUDGMENT, and the accompanying DECLARATION OF VICTOR SAPPHIRE and Exhibits thereto were served upon the Registrant by First Class Mail, postage prepaid, this 30th day of May, 2012:

Drew Massey dba Myundies Inc
3387 Xanthia Street
Denver, Colorado 80238

/s/ _____
Victor K. Sapphire

To: MeUndies, LLC (trademarks@cblh.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85467637 - MEUNDIES.COM - 33082-2
Sent: 2/24/2012 3:23:18 PM
Sent As: ECOM101@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)

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

APPLICATION SERIAL NO. 85467637

MARK: MEUNDIES.COM

85467637

CORRESPONDENT ADDRESS:

VICTOR K. SAPPHIRE, ESQ.
CONNOLLY BOVE LODGE & HUTZ LLP
333 S GRAND AVE STE 2300
LOS ANGELES, CA 90071-1529

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: MeUndies, LLC

CORRESPONDENT'S REFERENCE/DOCKET

NO:

33082-2

CORRESPONDENT E-MAIL ADDRESS:

trademarks@cblh.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: 2/24/2012

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

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. 3688473. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.*
See the enclosed registration.

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

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

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

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

The cited mark is MYUNDIES for underwear and various other clothing items. Applicant's mark is MEUNDIES.COM for undergarments, clothing and retail sale of those and related goods. The commercial impressions of the marks are nearly the same, as "my" and "me" have the same meaning in the context of the marks, and are combined with "undies." The ".com" addition to the applicant's mark serves only to show that the mark is part of a domain name. Given the use of such similar marks for the same and closely related goods and services, consumers would likely believe the goods and services are from the same source.

Applicant should note the following additional ground for refusal.

MARK DIFFERS MATERIALLY ON DRAWING AND SPECIMEN

The mark on the specimen disagrees with the mark on the drawing. In this case, the specimen displays the mark as MY UNDIES .COM (three separate terms); and the drawing shows the mark as MYUNDIES.COM (one term).

An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of goods and/or services. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a). The mark on the drawing must be a substantially exact representation of the mark on the specimen. 37 C.F.R. §2.51(a); TMEP §807.12(a); *see* 37 C.F.R. §2.72(a)(1).

The drawing of the mark can be amended only if the amendment does not materially alter the mark as originally filed. 37 C.F.R. §2.72(a)(2); *see* TMEP §§807.12(a), 807.14 *et seq.* However, amending the mark in the drawing to conform to the mark on the specimen would be a material alteration in this case because the mark on the specimen creates a different commercial impression from the mark on the drawing. Specifically, three separate terms completely differs from a single term. For instance, “UNDIES .COM” would need to be disclaimed apart from the mark as shown, if the mark were comprised of three terms. The unitary, single term requires no disclaimer.

Therefore, applicant must submit the following:

- (1) A substitute specimen showing use in commerce of the mark on the drawing. *See* TMEP §807.12(a).; and
- (2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **“The substitute specimen was in use in commerce at least as early as the filing date of the application.”** *See* 37 C.F.R. §§2.59(a), 2.193(e)(1); TMEP §904.05. If submitting a specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, or displays associated with the actual goods at their point of sale. *See* TMEP §§904.03 *et seq.* Examples of specimens for services are signs, photographs, brochures, website printouts or advertisements that show the mark used in the actual sale or advertising of the services. *See* TMEP §§1301.04 *et seq.*

If applicant cannot satisfy the above requirements, applicant may amend the application from a use in commerce basis under Trademark Act Section 1(a) to an intent to use basis under Section 1(b), for which no specimen is required. *See* TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. *See* 15 U.S.C. §1051(c)-(d); 37 C.F.R. §§2.76, 2.88; TMEP §1103.

To amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **“Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods and/or services listed in the application as of the filing date of the application.”** 37 C.F.R. §2.34(a)(2); TMEP §806.01(b); *see* 15 U.S.C. §1051(b); 37 C.F.R. §§2.35(b)(1), 2.193(e)(1).

Pending receipt of a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a trademark and/or service mark. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

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

Applicant must respond to the requirements set forth below.

IDENTIFICATION OF GOODS AND SERVICES

The identification is indefinite and must be clarified because the clothing items must be specified, the services must be clearly and acceptably set forth ("retail services" is not an acceptable construct – "retail store services" is), "subscription retail services" is not recognized or understood, goods and services may not be combined into a single identification, and the fee for an additional class must be paid. *See* TMEP §1402.01. Applicant may adopt the following identification, if accurate:

"Clothing, namely, headwear, tops, bottoms, coats, jackets, pants and shirts; undergarments," in class **25**;

"Retail store and on-line retail store services featuring clothing and accessories," in class **35**.

Applicant must rewrite the identification in its entirety because of the nature and extent of the amendment. 37 C.F.R. §2.74(a).

An applicant may amend an identification only to clarify or limit the goods and services; adding to or broadening the scope of them is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07 *et seq.*

ONLINE ID MANUAL

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

MULTIPLE – CLASS APPLICATION REQUIREMENTS

For an application with more than one international class, called a "multiple-class application," an applicant must meet all the requirements below for those international classes based on use in commerce:

- (1) **LIST GOODS AND/OR SERVICES BY INTERNATIONAL CLASS:** Applicant must list the goods and/or services by international class.
- (2) **PROVIDE FEES FOR ALL INTERNATIONAL CLASSES:** Applicant must submit an application filing fee for each international class of goods and/or services not covered by the fee(s) already paid (confirm current fee information at http://www.uspto.gov/trademarks/tm_fee_info.jsp).
- (3) **SUBMIT REQUIRED STATEMENTS AND EVIDENCE:** For each international class of goods and/or services, applicant must also submit the following:
 - (a) **DATES OF USE:** Dates of first use of the mark anywhere and dates of first use of the mark in commerce, or a statement that the dates of use in the initial application apply to that class. The dates of use, both anywhere and in commerce, must be at least as early as the filing date of the application.

(b) SPECIMEN: One specimen showing the mark in use in commerce for each international class of goods and/or services. Applicant must have used the specimen in commerce at least as early as the filing date of the application. If a single specimen supports multiple international classes, applicant should indicate which classes the specimen supports. Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, or displays associated with the goods at their point of sale. *See* TMEP §§904.03 *et seq.* Examples of specimens for services are signs, photographs, brochures, website printouts, or advertisements that show the mark used in the actual sale or advertising of the services. *See* TMEP §§1301.04 *et seq.*

(c) STATEMENT: The following statement: “**The specimen was in use in commerce on or in connection with the goods and/or services listed in the application at least as early as the filing date of the application.**”

(d) VERIFICATION: Applicant must verify the statements in 3(a) and 3(c) (above) in an affidavit or signed declaration under 37 C.F.R. §2.20. Verification is not required where (1) the dates of use for the added class are stated to be the same as the dates of use specified in the initial application, and (2) the original specimens are acceptable for the added class(es).

See 15 U.S.C. §§1051(a), 1112, 1127; 37 C.F.R. §§2.32(a)(5), 2.34(a)(1), 2.56(a), 2.71(c), 2.86(a), 2.193(e)(1); TMEP §§1403.01, 1403.02(c).

With respect to the specimen requirement in 3(b) above in which a specimen is required for each international class of goods and/or services, the specimens of record are acceptable for International Class **35** only. Applicant must submit additional specimens if different international classes are added to the application. Also, it looks like only undergarments are being sold.

VERIFICATION OF SUBSTITUTE SPECIMEN

The following is a sample declaration for a verified substitute specimen for use in a paper response:

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that *the substitute specimen was in use in commerce at least as early as the filing date of the application*; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

(Signature)

(Print or Type Name and Position)

(Date)

/Ira Goodsaid/
Ira Goodsaid
Trademark Examining Attorney
Law Office 101
571-272-9166
ira.goodsaid@uspto.gov

TO RESPOND TO THIS LETTER: Go to 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. 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>.

DESIGN MARK

Serial Number

77597995

Status

REGISTERED

Word Mark

MYUNDIES

Standard Character Mark

Yes

Registration Number

3688473

Date Registered

2009/09/29

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Drew Massey DBA myUndies Inc. INDIVIDUAL UNITED STATES 3387 Xanthia Street Denver COLORADO 80238

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing, namely, underwear; boxers, briefs, panties, thongs, bras, sleepwear, loungewear, shirts, shorts, jeans, pants, socks, and hats. First Use: 1999/07/31. First Use In Commerce: 2000/01/01.

Prior Registration(s)

7592547

Filing Date

2008/10/22

Examining Attorney

FINNEGAN, TIMOTHY

MYUNDIES

To: MeUndies, LLC (trademarks@cblh.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85467637 - MEUNDIES.COM - 33082-2
Sent: 2/24/2012 3:23:21 PM
Sent As: ECOM101@USPTO.GOV
Attachments:

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

**USPTO OFFICE ACTION HAS ISSUED ON 2/24/2012 FOR
SERIAL NO. 85467637**

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

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

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

RESPONSE IS REQUIRED: You should carefully review the Office action to determine (1) how to respond; and (2) the applicable [response time period](#). Your response deadline will be calculated from **2/24/2012** (or sooner if specified in the office action).

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

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

WARNING

Failure to file the required response by the applicable deadline will result in the [ABANDONMENT](#) of your application.