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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Pony, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	860 South Los Angeles Street Suite 817 Los Angeles, CA 90014 UNITED STATES		

Attorney information	Andrew D. Skale Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, P.C. 3580 Carmel Mountain Road Suite 300 San Diego, CA 92130 UNITED STATES adskale@mintz.com Phone:858-314-1506
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Registration Subject to Cancellation

Registration No	3375584	Registration date	01/29/2008
Registrant	Melzer, William C. 210 Desert Holly Drive Palm Desert, CA 92211 UNITED STATES		

Goods/Services Subject to Cancellation

<p>Class 025. First Use: 2006/01/01 First Use In Commerce: 2007/05/13 All goods and services in the class are cancelled, namely: Jeans; A-shirts; Balloon pants; Belts; Bermuda shorts; Blouses; Board shorts; Boots; Boxer shorts; Breeches; Camp shirts; Capri pants; Cargo pants; Clothing, namely, hand-warmers; Denim jackets; Denims; Down jackets; Dress shirts; Fabric belts; Fleece pullovers; Fleece shorts; Fur coats and jackets; Fur jackets; Golf shirts; Horse-riding boots; Infants' shoes and boots; Jackets; Jogging pants; Leather belts; Leather jackets; Leather pants; Leg warmers; Leg-warmers; Leggings; Light-reflecting jackets; Lounge pants; Night shirts; Open-necked shirts; Panties, shorts and briefs; Pants; Polo shirts; Ponchos; Pullovers; Rainproof jackets; Riding boots; Shirts; Short trousers; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Shorts; Slacks; Sleep shirts; Sleeved or sleeveless jackets; Sport shirts; Sports jerseys and breeches for sports; Sports shirts; Sports shirts with short sleeves; Stuff jackets; Suede jackets; Sweat pants; Sweat shirts; Sweat shorts; Sweaters; T-shirts; Turtleneck sweaters; Underwear, namely, boy shorts; V-neck sweaters; Waist belts; Wind resistant jackets; Wind shirts; Wind-jackets</p>
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Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)
Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2666379	Application Date	03/01/2002
Registration Date	12/24/2002	Foreign Priority Date	NONE
Word Mark	PONY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1973/00/00 First Use In Commerce: 1973/00/00 shirts, t-shirts, tank tops, jerseys, sweatshirts, sweatpants, hooded pullovers, shorts, pants, caps, hats, visors, headbands, wristbands, jackets, athletic and casual footwear		

U.S. Registration No.	2666380	Application Date	03/01/2002
Registration Date	12/24/2002	Foreign Priority Date	NONE
Word Mark	PONY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1973/00/00 First Use In Commerce: 1973/00/00 shirts, t-shirts, tank tops, jerseys, sweatshirts, sweatpants, hooded pullovers, shorts, pants, caps, hats, visors, headbands, wristbands, jackets, athletic and casual footwear		

U.S. Registration No.	2741220	Application Date	03/01/2002
Registration Date	07/29/2003	Foreign Priority Date	NONE

Word Mark	PONY
Design Mark	PONY
Description of Mark	NONE
Goods/Services	Class 018. First use: First Use: 1973/00/00 First Use In Commerce: 1973/00/00 Bags, namely all purpose sports bags and wallets

U.S. Registration No.	2878297	Application Date	03/01/2002
Registration Date	08/31/2004	Foreign Priority Date	NONE

Word Mark	PONY
Design Mark	
Description of Mark	NONE
Goods/Services	Class 018. First use: First Use: 1973/00/00 First Use In Commerce: 1973/00/00 Bags, namely all purpose sports bags and wallets

U.S. Registration No.	1040116	Application Date	01/17/1974
Registration Date	05/25/1976	Foreign Priority Date	NONE
Word Mark	PONY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 018. First use: First Use: 1973/09/00 First Use In Commerce: 1973/11/00 [TOTE BAGS] Class 025. First use: First Use: 1973/01/00 First Use In Commerce: 1973/05/00 WEARING APPAREL-NAMELY, [TRACK SUITS, T-SHIRTS AND] SPORTS FOOTWEAR

U.S. Registration No.	2668890	Application Date	03/01/2002
Registration Date	12/31/2002	Foreign Priority Date	NONE

Word Mark	PONY
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 shirts, t-shirts, tank tops, jerseys, sweatshirts, sweatpants, hooded pullovers, shorts, pants, caps, hats, visors, headbands, wristbands, jackets, athletic and casual footwear

U.S. Registration No.	2746335	Application Date	03/01/2002
Registration Date	08/05/2003	Foreign Priority Date	NONE
Word Mark	PONY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 018. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 Bags, namely, all purpose sports bags [and wallets]

U.S. Registration No.	3938095	Application Date	09/07/2010
Registration Date	03/29/2011	Foreign Priority Date	NONE
Word Mark	PONY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2006/12/31 First Use In Commerce: 2006/12/31 Sporting goods, namely, baseballs, footballs, basketballs, soccer balls, volley balls, tennis balls, baseball gloves, bats for games, batting gloves, body-building apparatus, body-training apparatus, boxing gloves, elbow guards, knee guards, nets for sports, tables for table tennis		

Attachments	76376980#TMSN.gif (1 page)(bytes) 76376982#TMSN.gif (1 page)(bytes) 76376981#TMSN.gif (1 page)(bytes) 76376979#TMSN.gif (1 page)(bytes) 73011177#TMSN.gif (1 page)(bytes) 76377048#TMSN.gif (1 page)(bytes) 76377047#TMSN.gif (1 page)(bytes) 85123787#TMSN.jpeg (1 page)(bytes) PONY PALS.pdf (7 pages)(250804 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Andrew D. Skale/
Name	Andrew D. Skale
Date	08/03/2012

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

In the matter of Registration No. 3,375,584 for PONY PALS
Registration Date: January 29, 2008

_____)	
PONY, INC.,)	
)	
Petitioner,)	
)	Cancellation No.: _____
v.)	
)	
WILLIAM C. MELZER, an individual,)	
)	
Registrant.)	
_____)	

Trademark Assistance Center
Madison East, Concourse Level Room C 55
600 Dulany Street
Alexandria, VA 22314

PETITION FOR CANCELLATION

Pony, Inc. (“Petitioner” or “PONY”), a Delaware corporation located and doing business at 860 South Los Angeles Street, Suite 817, Los Angeles, California 90014, believes that it is and will be damaged by continued registration of the mark PONY PALS (“Petitioned Mark”), U.S. Registration No. 3,375,584. The Petitioned Mark is registered for “Jeans; A-shirts; Balloon pants; Belts; Bermuda shorts; Blouses; Board shorts; Boots; Boxer shorts; Breeches; Camp shirts; Capri pants; Cargo pants; Clothing, namely, hand-warmers; Denim jackets; Denims; Down jackets; Dress shirts; Fabric belts; Fleece pullovers; Fleece shorts; Fur coats and jackets; Fur jackets; Golf shirts; Horse-riding boots; Infants' shoes and boots; Jackets; Jogging pants; Leather belts; Leather jackets; Leather pants; Leg warmers; Leg-warmers; Leggings; Light-reflecting jackets; Lounge pants; Night shirts; Open-necked shirts; Panties, shorts and briefs;

Pants; Polo shirts; Ponchos; Pullovers; Rainproof jackets; Riding boots; Shirts; Short trousers; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Shorts; Slacks; Sleep shirts; Sleeved or sleeveless jackets; Sport shirts; Sports jerseys and breeches for sports; Sports shirts; Sports shirts with short sleeves; Stuff jackets; Suede jackets; Sweat pants; Sweat shirts; Sweat shorts; Sweaters; T-shirts; Turtleneck sweaters; Underwear, namely, boy shorts; V-neck sweaters; Waist belts; Wind resistant jackets; Wind shirts; [and] Wind-jackets” in Class 25. Petitioner hereby petitions for cancellation of the above-referenced Registration pursuant to 15 U.S.C. §§ 1052, 1064 and 37 C.F.R. § 2.112. In support of this Petition, Petitioner alleges as follows:

FACTUAL BACKGROUND

1. Petitioner owns the following U.S. Registration Nos. for its family of PONY marks (“Family of PONY Marks”), among other marks:

- 2,666,379; for the mark PONY (& Design)  for use in connection with “shirts, t-shirts, tank tops, jerseys, sweatshirts, sweatpants, hooded pullovers, shorts, pants, caps, hats, visors, headbands, wristbands, jackets, athletic and casual footwear.”
- 2,666,380; for the word mark PONY for use in connection with “shirts, t-shirts, tank tops, jerseys, sweatshirts, sweatpants, hooded pullovers, shorts, pants, caps, hats, visors, headbands, wristbands, jackets, athletic and casual footwear.”
- 2,741,220; for the mark PONY for use in connection with “Bags, namely all purpose sports bags and wallets.”
- 2,878,297; for the mark  for use in connection with “Bags, namely all purpose sports bags and wallets.”
- 1,040,116; for the mark  for use in connection with “Wearing apparel- namely, [track suits, t-Shirts and] sports footwear.”
- 2,668,890; for the mark  for use in connection with “shirts, t-shirts, tank tops, jerseys, sweatshirts, sweatpants, hooded pullovers, shorts, pants, caps, hats,

visors, headbands, wristbands, jackets, athletic and casual footwear.



- 2,746,335; for the mark  for use in connection with “Bags, namely, all purpose sports bags [and wallets].”

PONY

- 3,938,095; for the mark  for use in connection with “Sporting goods, namely, baseballs, footballs, basketballs, soccer balls, volley balls, tennis balls, baseball gloves, bats for games, batting gloves, body-building apparatus, body-training apparatus, boxing gloves, elbow guards, knee guards, nets for sports, tables for table tennis.”

2. William C. Melzer (“Registrant”) is the current owner of record of U.S. Registration No. 3,375,584 in the U.S. Patent and Trademark Office (“Registration”) for the Petitioned Mark PONY PALS. Upon information and belief, Registrant’s address of record is 210 Desert Holly Drive, Palm Desert, CA 92211.

3. On information and belief, Petitioner’s Family of PONY Marks have been both registered on the principal register and used in commerce prior to Registrant’s first use date for the goods in his registration; the Petitioned Mark is confusingly similar to Petitioner’s Family of PONY Marks; and Registrant is not using the Petitioned Mark on the goods noted in his Registration.

4. Petitioner reached out to Registrant on May 3, 2012, in an attempt to find an amicable solution to this matter. Registrant ignored such request.

5. Petitioner is a famous designer and manufacturer of, among other things, clothing, footwear, accessories, and sporting goods.

6. The Pony brand was founded in 1972 and became one of the most distinctive sports brands in the world. The athletes who have worn and/or endorsed Pony’s shoes or clothing include: Pele, Muhammad Ali, George Foreman, David Thompson, Darryl Dawkins, Spud Webb, Dan Marino, Lawrence Taylor, Reggie Jackson, Tracy Austin, Randy Moss, Josh

Hamilton and others.

7. Since at least the 1970's, Petitioner has manufactured and sold these goods in the U.S. under the trademark PONY.

8. Petitioner has developed significant and valuable goodwill in the U.S. in its famous PONY Family of Marks, including when used for clothing, footwear, accessories, and sporting goods. It is of great value to Petitioner and is relied on by the trade and the public to identify Petitioner's products and distinguish them from the products of others.

COUNT ONE

9. Petitioner re-alleges and incorporates herein by reference all allegations in this Petition as if fully set forth herein.

10. Registrant's mark PONY PALS so resembles Petitioner's Mark as to be likely, when applied to the goods of Registrant, to cause confusion, to cause mistake, or to deceive.

11. Petitioner has been using its family of PONY marks in U.S. commerce in connection with clothing, footwear, accessories, and sporting goods since the 1970's, which is prior to the May 2007 date of first use set forth in U.S. Registration No. 3,375,584. Accordingly, Petitioner has prior rights in the U.S. for the mark PONY.

12. As a result of the foregoing, Petitioner will be damaged by the continued registration of the Petitioned Mark, PONY PALS in the U.S.

COUNT TWO

13. Petitioner re-alleges and incorporates herein by reference all allegations in this Petition as if fully set forth herein.

14. Registrant's mark PONY PALS falsely suggests that Registrant or his business and products are connected, associated, or affiliated with Petitioner or Petitioner's business and products sold in the U.S. under the name PONY.

15. As a result of the foregoing, Petitioner will be damaged by the continued registration of the mark PONY PALS in the U.S.

COUNT THREE

16. Petitioner re-alleges and incorporates herein by reference all allegations in this Petition as if fully set forth herein.

17. Petitioner alleges, on information and belief, that Registrant has abandoned the Petitioned Mark PONY PALS. On information and belief, Registrant is not currently using the Petitioned Mark in commerce within the scope of the challenged Registration. On information and belief, Registrant has abandoned the Petitioned Mark by discontinuing use of the mark with no intent to resume use.

18. Petitioner believes that it is and will be damaged by continued registration of the Petitioned Mark since it impinges Petitioner's ability to hold itself out as the owner of its PONY marks.

COUNT FOUR

19. Petitioner re-alleges and incorporates herein by reference all allegations in this Petition as if fully set forth herein.

20. Petitioner's Family of PONY Marks were famous as defined under Section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c), prior to Registrant's obtaining his registration.

21. Petitioner's Family of PONY Marks were inherently distinctive prior to Registrant's obtaining his registration.

22. Petitioner engaged in substantially exclusive use and/or control of its famous marks prior to Registrant's obtaining his registration.

23. Registrant's registration for the mark will impair the distinctiveness of Petitioner's rights in the famous marks to identify and distinguish the goods of Petitioner. Continued

registration of Registrant's mark will further damage Petitioner in violation of Section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c).

WHEREFORE, Petitioner believes that it is and will be damaged by continued registration of the mark PONY PALS, Registration No. 3,375,584, and therefore requests cancellation of the Registration on the grounds of prior use, likelihood of confusion, dilution and abandonment of the Petitioned Mark with no intent to resume use.

Respectfully submitted,

By: /Andrew D. Skale/
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Dated: August 3, 2012

**ATTORNEYS FOR PETITIONER
PONY, INC.**

