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Filing date: **10/05/2012**

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	Fresh LLC		
Entity	Corporation	Citizenship	New York
Address	163 E. Main St., #284 Little Falls, NY 07424 UNITED STATES		

Attorney information	Thomas K. Richards 249 Skillman Ave. #2 Brooklyn, NY 11211 UNITED STATES trichards1975@gmail.com
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Registration Subject to Cancellation

Registration No	3607360	Registration date	04/14/2009
Registrant	Butscher, Jeffrey P.O. Box 2345 Manhattan Beach, CA 90267 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2008/10/01 First Use In Commerce: 2008/12/15 All goods and services in the class are cancelled, namely: Clothing, namely, neck tubes; Clothing, namely, thobes; Clothing, namely, wrap-arounds; Corsets; Dusters; Hoods; Infant and toddler one piece clothing; Jerseys; Leather belts; Mantles; Mufflers; Parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; Shifts; Short sets; Shoulder wraps; Swaddling clothes; Ties; Tops; Underarm clothing shields; Wraps
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Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	PHRESH Petition to Cancel.pdf (3 pages)(323668 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	/Thomas K. Richards/
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Name	Thomas K. Richards
Date	10/05/2012

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

FRESH, LLC

Petitioner,

JEFFREY BUTSCHER,

Respondent

X

Opposition No. _____

Mark: PHRESH

Registration No. 3,607,360

PETITION FOR CANCELLATION

Fresh, LLC, ("Petitioner") believes it will be damaged by the above identified registration and petitions to cancel the same. As grounds for its petition to cancel, Petitioner alleges that:

1. Petitioner is seeking to obtain, under the provisions of the Trademark Act of 1946, as amended, registration for three trademarks on the Principal Register: (1) the logo mark FRESH for: " Button Down Shirts; Cargo Pants; Collared Shirts; Denim Jackets; Denims; Down Jackets; Dress Pants; Dress Shirts; Fur Jackets; Golf Shirts; Heavy Jackets; Hooded Sweat Shirts; Jeans; Jeggings, namely pants that are partially jeans and partially leggings; Jogging Pants; Pants; Polo Shirts; Rugby Shirts; Shell Jackets; Shirts; Ski Jackets; Sweat Jackets; Sweat Pants; Sweat Shirts; T-Shirts; Wind-Jackets; in International Class 025, Serial Number 85553038; (2) the word mark FRESH for ""Button down shirts; Collared shirts; Denim jackets; Down jackets; Dress pants; Dress shirts; Hats; Heavy jackets; Hooded sweatshirts; Jackets; Jeans; Leather jackets; Men's and women's jackets, coats, trousers, vests; Pants; Short-sleeved or long-sleeved t-shirts; Sweatshirts; T-shirts" Serial Number 85528193; and (3) the word mark FRESH for "On-line retail store services featuring clothing and music; Retail store services featuring clothing and music" in international class 035, Serial Number 85568605 ("Petitioner's Marks").
2. Jeffrey Butscher ("Respondent") appears to have a trademark registration for the word PHRESH, Registration No. 3,607,360, for "Clothing, namely Neck Tubes; Clothing, namely, Thobes; Clothing, namely Wrap-Arounds; Corsets; Dusters; Hoods; Infant and Toddler One Piece Clothing; Jerseys; Leather Belts; Mantles; Mufflers; Parts of clothing, namely, Gussets for Tights; Gussets for Stockings; Gussets for Bathing Suits; Gussets for Underwear; Gussets for Leotards and Gussets for Footlets; Shifts; Short Sets; Shoulder Wraps; Swaddling Clothes; Ties; Tops; Underarm Clothing Shields; and Wraps" in International Class 025 ("Abandoned Mark").
3. On May 2, 2012 Petitioner received three Office Actions from the United

States Patent and Trademark Office (“USPTO”) initially refusing to register Petitioner’s Marks under Section 2(d) on the grounds that they were likely to cause confusion with the Abandoned Mark. The Abandoned Mark is the basis upon which the USPTO has initially refused to register the Petitioner’s Marks. As such, the Abandoned Mark is causing injury and damage to Petitioner.

4. On February 2, 2009 Respondent submitted a specimen of use to the USPTO which consists of a .jpeg of a label bearing the Abandoned Mark as well as a photo of the clothing purportedly associated with the Abandoned Mark and also screenshots of the website www.preshla.com (the “Web-Site”) and the order form from the Web-Site where goods associated with the Abandoned Mark were purportedly sold.

5. To date, Petitioner has been unable to find any goods for sale bearing the Abandoned Mark in the form of the specimen, or in any form, or any use of the Abandoned Mark in commerce.

6. Petitioner and its counsel (signature below)(“We”) have researched the Abandoned Mark to attempt to determine whether it is still used in commerce. That research yielded the following:

(a) We conducted an internet search using the Google search engine for any products bearing the Abandoned Mark. We were unable to find any items for sale bearing the Abandoned Mark.

(b) The Web-Site is inoperative and appears to have been shut down and abandoned.

(c) The phone number listed on the specimen filed by Respondent as a contact point to order goods that purportedly would bear the Abandoned Mark is 310.462.0200. That phone number is not a business number, appears to be respondent’s personal phone number, and is not a conduit for ordering goods bearing the Abandoned Mark.

6. In sum, the Abandoned Mark is not being used in commerce and is not used in connection with the sale of any goods Petitioner can locate, even using the very information provided by Respondent as purported proof of use of the Abandoned Mark in commerce.

7. Upon information and belief, the Abandoned Mark has not been used for at least 3 or more consecutive years and upon information and belief there does not appear to be any intent to resume the use of the Abandoned Mark by Respondent.

8. Accordingly, upon information and belief, the Abandoned Mark has been abandoned pursuant to Section 45 of the Trademark Act.

9. Petitioner requests that Registration No. 3,607,360 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully Submitted,

/Thomas K. Richards/

**Thomas K. Richards, Esq.
Starpower Management, Inc.
70 Grand Avenue, Suite 107
River Edge New Jersey 07661**

Date: October 5, 2012
Attorney for Petitioner