

ESTTA Tracking number: **ESTTA541895**

Filing date: **06/05/2013**

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

Proceeding	92056608
Party	Defendant Next Level Sportsystems, Inc. and Sierra Sportswear, Inc.
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Date	06/05/2013
Attachments	Motion and Answer together.pdf(107053 bytes)

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

YS GARMENTS, INC.)	
)	Proceeding No. 92056608
)	
Petitioner,)	Registration No. 3503550
v.)	
)	Mark: NEXT LEVEL
NEXT LEVEL SPORTSYSTEMS, INC.)	
and)	
SIERRA SPORTSWEAR, INC.)	
)	
Registrants.)	

MOTION TO LATE FILE REGISTRANTS’
ANSWER TO FIRST AMENDED PETITION FOR CANCELLATION

Registrants Next Level Sportsystems, Inc. and Sierra Sportswear, Inc.
 (“Registrants”) herein move the Board to accept late filing of Registrants’ Answer to
 First Amended Petition for Cancellation.

This cancellation proceeding was filed by Petitioner YS Garments, Inc. on
 December 20, 2012. Registrants Next Level Sports Systems, Inc. and Sierra Sportswear,
 Inc. answered the petition February 7, 2012.

Upon request of the parties, a discovery conference with Board participation was
 held April 12, 2013. Although Petitioner was represented by counsel, Registrants were
 represented by a corporate representative. At the conference, the Interlocutory Attorney
 found Petitioner had failed to adequately plead its standing and claim of damage.

Petitioner was granted twenty days to file an amended petition and registrants were

granted twenty days from the date on the certificate of service of the amended petition to file and serve an answer. [See, Discovery Conference Order, April 12, 2013].

Petitioner filed its First Amended Petition for Cancellation on April 26, 2013. Therefore, Registrants' answer was due May 16, 2013.

Registrant Next Level Sportsystems' President John Mack spoke with the interlocutory attorney on or about May 23, 2013 to convey that it would need until May 29, 2013 to retain counsel for this matter and to prepare and file the Answer. Mr. Mack was instructed to file a motion for late filing with the Answer. Furthermore, Counsel for Petitioner YS Garments, Inc. agreed to not object to extension of time to file the Answer through May 29, 2013.

Good cause for granting the motion should be found because the delay in filing was not the result of willful conduct or gross neglect on the part of Registrants, but rather the retention of counsel, as recommended by the Interlocutory Attorney, for this matter. Registrants have been actively involved in this case, including attending the discovery conference. Therefore, this is not a case of registrant neglect of the matter. Petitioner will not be substantially prejudiced by the delay as Registrants are not requested any of the trial dates set be moved. Lastly, as reflected in the Answer filed herewith, Registrants have a meritorious defense, namely that they have not abandoned the mark and that Petitioner does not have priority of use.

Pursuant to TBMP § 312.02, with good cause showing, and a lack of objection from Petitioner, Registrants herein move the Board to accept a late-filed answer in this proceeding.

All other dates ordered in the April 12, 2013 Discovery Conference Order can remain as set by the Board.

Respectfully submitted,

Date: May 29, 2013

/s/ Susan B. Meyer
Susan B. Meyer
Attorneys for Registrant
NEXT LEVEL SPORTSYSTEMS, INC.
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Respectfully submitted,

Date: May 29, 2013

/s/ Sandeep Sharma
Sandeep Sharma
President, Registrant
Sierra Sportswear, Inc.
1384 Broadway, Suite 1400
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this **MOTION TO LATE FILE REGISTRANTS' ANSWER TO FIRST AMENDED PETITION FOR CANCELLATION** is being served on May 29, 2013 by Federal Express to:

JESSIE K REIDER
BUCHALTER NEMER APC
1000 WILSHIRE BLVD, SUITE 1500
LOS ANGELES, CA 90017
UNITED STATES

Attorney for Petitioner
YS Garments, Inc.

/s/ Sharee Gill _____

Sharee Gill

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YS GARMENTS, INC.)
) Proceeding No. 92056608
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Petitioner,) Registration No. 3503550
v.)
) Mark: NEXT LEVEL
NEXT LEVEL SPORTSYSTEMS, INC.)
and)
SIERRA SPORTSWEAR, INC.)
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Registrants.)

**REGISTRANTS’ ANSWER TO FIRST AMENDED
PETITION FOR CANCELLATION**

Next Level Sportsystems, Inc. by and through its attorney and Sierra Sportswear, Inc., (“Registrants”) hereby answer each of the allegations of the Petition for Cancellation filed by YS Garments, Inc. (“Petitioner”).

1. Registrants admit that Petitioner on June 22, 2009 filed to register a trademark, NEXT LEVEL APPAREL and DESIGN, Serial No. 77765582. Registrants are without knowledge and information to form a belief as to the truth of the remaining allegations set forth in paragraph 2 and on that ground, denies each and every remaining allegation in paragraph 1.

2. Registrants admit the allegations contained in paragraph 2.

3. Registrants admit the allegations contained in paragraph 3.

4. Registrants admit the allegations contained in paragraph 4.

5. Registrants admit the allegations contained in paragraph 5.

6. Registrants are without knowledge and information to form a belief as to the truth of the allegations regarding Petitioner's beliefs, and on that ground, denies those allegations. Registrants deny each and every remaining allegation in paragraph 6.

7. Registrants deny each and every allegation contained in paragraph 7.

8. Registrants are without knowledge and information to form a belief as to the truth of the allegations regarding Petitioner's beliefs, and on that ground, denies those allegations. Registrants deny each and every remaining allegation in paragraph 8.

9. Registrants deny each and every allegation contained in paragraph 9.

10. Registrants admit the allegations contained in paragraph 10.

11. Registrants are without knowledge and information to form a belief as to the truth of the allegations regarding Petitioner's ability to register the NEXT LEVEL APPAREL and DESIGN mark, and on that ground, denies those allegations. Registrants deny each and every remaining allegation in paragraph 11.

12. Registrants deny each and every allegation contained in paragraph 12.

13. Registrants deny each and every allegation contained in paragraph 13.

14. Registrants are without knowledge and information to form a belief as to the truth of the allegations regarding Petitioner's alleged use of the NEXT LEVEL APPAREL and DESIGN mark, and on that ground, denies those allegations. Registrants deny each and every remaining allegation in paragraph 14.

15. Registrants deny each and every allegation contained in paragraph 15.

16. Registrants deny each and every allegation contained in paragraph 16.

17. Registrants are without knowledge and information to form a belief as to the truth of the allegations regarding Petitioner's alleged use of the NEXT LEVEL

APPAREL and DESIGN mark, and on that ground, denies those allegations. Registrants deny each and every remaining allegation in paragraph 17.

18. Registrants are without knowledge and information to form a belief as to the truth of the allegations regarding Petitioner's alleged search of publicly available resources, and on that ground, denies those allegations. Registrants deny each and every remaining allegation in paragraph 18.

19. Registrants deny each and every allegation contained in paragraph 19.

20. Registrants deny each and every allegation contained in paragraph 20.

21. Registrants deny each and every allegation contained in paragraph 21.

22. Registrants deny each and every allegation contained in paragraph 22.

23. Registrants deny each and every allegation contained in paragraph 23.

24. Registrants deny each and every allegation contained in paragraph 24.

25. Registrants deny each and every allegation contained in paragraph 25.

26. Registrants deny each and every allegation contained in paragraph 26.

27. Registrants admit the USPTO Examining Attorney has found Petitioner's NEXT LEVEL APPAREL and DESIGN mark that is the subject of the examined application to so resemble Registrants' NEXT LEVEL mark so as to be likely to cause confusion, to cause mistake or to deceive in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), as amended. Registrants deny each and every remaining allegation in paragraph 27.

28. Registrants deny each and every allegation contained in paragraph 28.

29. Registrants deny each and every allegation contained in paragraph 29.

30. Registrants deny each and every allegation contained in paragraph 30.

31. Registrants deny each and every allegation contained in paragraph 31.

32. Registrants are without knowledge and information to form a belief as to the truth of the allegations regarding Petitioner's alleged belief, and on that ground, denies those allegations. Registrants deny each and every remaining allegation in paragraph 32.

AFFIRMATIVE DEFENSES

1. Petitioner fails to state a claim upon which relief can be granted.

2. Petitioner has engaged in conduct and activities sufficient to constitute a waiver of any alleged right to seek relief as set forth in the Petition for Cancellation.

3. Petitioner has unclean hands with respect to the matters alleged in the Petition for Cancellation and, therefore, is barred from maintaining said Cancellation Proceeding.

4. Petitioner is barred by laches from maintaining said Cancellation Proceeding due to the length of time of knowledge of Registrants' mark to the date upon which this proceeding was filed.

5. Registrants' use of its NEXT LEVEL mark, registered as Registration No. 3503350 ("NEXT LEVEL mark"), is prior to Petitioner's use of its alleged NEXT LEVEL APPAREL and DESIGN mark.

6. Registrants have not ceased use or in any way abandoned the NEXT LEVEL mark.

7. Registrants reserve the right to develop further defenses during the Discovery Phase of the Opposition.

WHEREFORE, Registrants pray that the Petition for Cancellation be dismissed in its entirety with prejudice, that the Board agrees the registration issued to Registrants, Registration No. 3503550 for NEXT LEVEL be confirmed, and that the Board grant such other relief as it deems just and proper.

Respectfully submitted,

Date: May 29, 2013

/s/ Susan B. Meyer
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Respectfully submitted,

Date: May 29, 2013

/s/ Sandeep Sharma
Sandeep Sharma
President, Registrant
Sierra Sportswear, Inc.
1384 Broadway, Suite 1400
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JESSIE K REIDER
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LOS ANGELES, CA 90017
UNITED STATES

Attorney for Petitioner
YS Garments, Inc.

/s/ Sharee Gill

Sharee Gill