

ESTTA Tracking number: **ESTTA551624**

Filing date: **07/31/2013**

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 | JunkFood Clothing Company | | |
| Entity | Corporation | Citizenship | Georgia |
| Address | 5770 W. Jefferson Blvd Los Angeles, CA 90016-3107 UNITED STATES | | |

| | |
|----------------------|---|
| Attorney information | Warren E. Olsen (Reg. No. 27, 290) FITZPATRICK, CELLA, HARPER & SCINTO 1290 Avenue of the Americas 17th Floor New York, NY 10104-3800 UNITED STATES wolsen@fchs.com Phone:2027215448 |
|----------------------|---|

Registrations Subject to Cancellation

| | | | |
|--------------------------------|---|---------------------------------|------------|
| Registration No | 3786964 | Registration date | 05/11/2010 |
| International Registration No. | NONE | International Registration Date | NONE |
| Registrant | Pak's Trading Europe B.V. Molenvlietweg 6 Aalsmeer, 1432GW NETHERLANDS | | |

Goods/Services Subject to Cancellation

| |
|---|
| Class 025. All goods and services in the class are cancelled, namely: Clothing, namely, jackets, leather jackets, ski jackets, sail jackets, outer skiwear, shirts, t-shirts, pants, jeans, shorts, underwear, shawls, scarves, gloves, raincoats, belts, money belts; footwear; headgear, namely, hats, caps and berets |
|---|

Grounds for Cancellation

| | | | |
|---|---|-------------------|------------|
| <i>Torres v. Cantine Torresella S.r.l.Fraud</i> | 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) | | |
| Abandonment | Trademark Act section 14 | | |
| Priority and likelihood of confusion | Trademark Act section 2(d) | | |
| Registration No | 3701449 | Registration date | 10/27/2009 |
| Registrant | Pak's Trading Europe B.V. Molenvlietweg 6 Aalsmeer, 1432GW NETHERLANDS | | |

Goods/Services Subject to Cancellation

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|--|
| Class 025. First Use: 1983/05/18 First Use In Commerce: 1984/08/06 |
|--|

All goods and services in the class are cancelled, namely: Clothing, namely, suits, coats, jackets, shirts, tops, t-shirts, shoes, pants, jeans, shorts, and underwear; footwear, and headgear, namely, hats, caps, and berets; shawls, scarves and gloves; rowing gear, namely, raincoats; women's clothing, namely, dresses, skirts, and blouses

Grounds for Cancellation

| | | | |
|---|--|---|------------|
| <i>Torres v. Cantine Torresella S.r.l.Fraud</i> | | 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) | |
| Abandonment | | Trademark Act section 14 | |
| Priority and likelihood of confusion | | Trademark Act section 2(d) | |
| Registration No | 1377160 | Registration date | 01/07/1986 |
| International Registration No. | NONE | International Registration Date | NONE |
| Registrant | PAK'S TRADING EUROPE B.V. Molenvlietweg 6 Aalsmeer, NETHERLANDS | | |

Goods/Services Subject to Cancellation

Class 025.
All goods and services in the class are cancelled, namely: MEN'S, WOMEN'S AND CHILDREN'S [CLOTH AND LEATHER JACKETS, COATS AND TROUSERS;] CLOTH AND KNITTED SHIRTS AND SHORTS; AND UNDERWEAR

Grounds for Cancellation

| | | | |
|---|-------------------|---|--|
| <i>Torres v. Cantine Torresella S.r.l.Fraud</i> | | 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) | |
| Abandonment | | Trademark Act section 14 | |
| Related Proceedings | 91207632,92055799 | | |

Marks Cited by Petitioner as Basis for Cancellation

| | | | |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 2697853 | Application Date | 10/05/2001 |
| Registration Date | 03/18/2003 | Foreign Priority Date | NONE |
| Word Mark | NONE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 025. First use: First Use: 1995/12/00 First Use In Commerce: 2002/04/22 Clothing, namely, shirts, [and baseball caps] | | |

| | | | |
|----------------------|---|-----------------------|------------|
| U.S. Application No. | 77958107 | Application Date | 03/12/2010 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | NONE | | |
| Design Mark | | | |
| Description of | The mark consists of a stylized glove with two fingers forming a "V" with white | | |

| | |
|----------------|---|
| Mark | stars on a blue field and the other fingers having a field of red and white horizontal bars. |
| Goods/Services | Class 025. First use: First Use: 2005/08/22 First Use In Commerce: 2006/04/01 Men's, women's, and children's clothing, namely, shirts |

| | | | |
|---------------------------------------|--------------------------------|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | Junk Food and Peace Glove Logo | | |
| Goods/Services | clothing, such as T-Shirts | | |

| | |
|-------------|--|
| Attachments | 01044 013210 PETITION Reg 3786964.pdf(208341 bytes) 01044 013220 PETITION Reg 3701449.pdf(210141 bytes) 01044 013230 PETITION Reg 1377160.pdf(195636 bytes) |
|-------------|--|

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

| | |
|-----------|------------------------------------|
| Signature | /warreneolsen/ |
| Name | Warren E. Olsen (Reg. No. 27, 290) |
| Date | 07/31/2013 |

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

In re:



Registration:

Reg. No.: **3,786,964**

| | | |
|---|---|-------------------------------------|
| JunkFood Clothing Company, (Georgia corporation) |) | |
| |) | Cancellation No. |
| Petitioner |) | |
| v. |) | Atty Docket No. 01044.013210 |
| |) | |
| Pak's Trading Europe B.V., (Netherlands corporation) |) | |
| Respondent. |) | |

PETITION FOR PARTIAL CANCELLATION

JunkFood Clothing Company believes that it is and will continue to be damaged by the

registration of  (Reg. No. 3,786,964) [hereinafter "Registration"], and hereby timely petitions for a partial cancellation of the Registration as to International Class 025 under 15 USC § 1064, by and through its undersigned attorneys.

THE PARTIES AND STANDING TO CANCEL

1. Upon information and belief, the Registration was filed by, and the owner of record remains as, Pak's Trading Europe B.V., a Netherlands corporation, having a place of business at Molenvlietweg 6, 1432 GW Aalsmeer, Netherlands [hereinafter "Registrant" or "PTE"].

2. JunkFood Clothing Company [hereinafter "Petitioner" or "JF"], is a Georgia corporation having an address at 5770 W. Jefferson Blvd., Los Angeles, CA 90016-3107.

3. JF has standing and has been damaged by both oral and written allegations of infringement made by PTE against both JF and its customers between March 2012 and July 2013, based upon alleged rights in the Registration which are in fact inferior to and inconsistent with common law and statutory rights of JF arising from prior uses in commerce and prior registration.

4. JF has standing and has been damaged by the assertion of the Registration in Opposition No. 91207632 against JF's Application No. 77958107.

FACTS IN SUPPORT OF THE CANCELLATION

5. JF is a well-known manufacturer and distributor of apparel items throughout the United States that are directly competitive with, or related to, items within the recited Clothing



Goods, and has affixed the neck label  to millions of T-shirts that have been sold in commerce continuously, since 2005 and thereby has acquired prior rights in the design formative



with respect to apparel related to the Clothing Goods.



6. JF owns an incontestable, prior registration of (Reg. No 2,697,853) issued March 18, 2003 for “clothing, namely, shirts, and baseball caps” in International Class 025. The TSDR Status for Reg. No. 2,697,853 is attached as Exhibit A.

7. The Registration was granted on May 11, 2010, upon an application filed June 25,



2009 based solely upon Section 44(e) and a claim to ownership of the design of Benelux Reg. 0564597, dated May 16, 1995, for the recited International Class 025 goods “Clothing, footwear, headgear”. During prosecution of the Registration the goods in International Class 025 were amended to read “Clothing, namely, jackets, leather jackets, ski jackets, sail jackets, outer skiwear, shirts, t-shirts, pants, jeans, shorts, underwear, shawls, scarves, gloves, raincoats, belts, money belts; footwear; headgear, namely, hats, caps and berets” [herein “Clothing Goods”].

8. The Registration is limited to the priority of its filing date, June 25, 2009.

9. The Registration is supported by Declaration, Power of Attorney or Appointment of Domestic Representative signed and dated June 26, 2009, by Young S. Park, President of PTE.

10. In his June 26, 2009 declaration, Mr. Park declared that “Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services.”

11. PTE has alleged in the infringement letters that it has a United States presence at PO Box 5119, Longview Texas 75608. Upon information and belief, that mailing address is owned and operated solely by Vincistar USA Inc., a Texas corporation that was incorporated only on September 12, 2008.

12. PTE has alleged in the infringement letters only ownership of the Registration, and not any past or current use in commerce of the design  as a trademark upon any specific goods.

13. Despite repeated questioning by JF and its agents between March 2012 and July 2013, PTE has not identified a single use in United States commerce of the mark claimed in the Registration. Likewise, PTE has not identified any licensee, franchisee or related company that has used the mark claimed in the Registration at any time after the date of registration.

14. Upon information and belief, PTE maintains websites <http://www.vincistar.com> and <http://www.vincistarus.com> (last visited May 21, 2013). Neither website has any retail sales capability. The <http://www.vincistarus.com> states that “the company’s [sic] current focus is on the expansion of brand awareness through licensing opportunities” (Exhibit B).

15. The website <http://www.vincistarus.com> identifies only one location in the United States at 3607 Gilmer Road, PO Box 5119, Longview Texas 75608. Page 8 of an electronic brochure, Exhibit C, accessed through <http://www.vincistarus.com>, on or about April 29, 2013, identifies that in April of 1994, Vincistar’s “Pilot Store was opened in Longview, Texas, promoted as the corner stone [sic] of Vincistar’s franchise operations.” Visits to this location by an investigator on April 29 and 30, 2013 found neither a retail apparel operation open to the public nor anything that could be described as a “Pilot Store”. A picture of the building at

this location is attached as Exhibit D. A picture of a closed front door alleging a possible “showroom” is attached as Exhibit E.

16. JF, a well-known manufacturer and distributor of apparel items throughout the United States, has never encountered any of the various apparel goods claimed in the Registration bearing a mark as claimed in the Registration, and on sale in United States commerce.

17. Upon information and belief, PTE has not sold each item of the Clothing Goods

marked with the design  as a trademark in commerce at any time, after May 11, 2010.

18. Upon information and belief, PTE has not sold one or more items of the Clothing

Goods marked with the design  as a trademark in commerce for at least one continuous three year period, between May 11, 2010, and the present date.

19. Upon information and belief, PTE as of June 25, 2009, did not have a bona fide

intention to use the design  as a trademark in commerce upon one or more items item of the Clothing Goods.

20. Upon information and belief, PTE discontinued any use of the design  as a trademark in commerce with respect to one or more items of the Clothing Goods, with no intent to resume use, between May 11, 2010, and the present date.



21. Upon information and belief, PTE has abandoned use the design as a trademark in commerce with respect to one or more items of the Clothing Goods, with no intent to resume use, between May 11, 2010, and the present date.

FIRST GROUNDS OF CANCELLATION

22. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1-21 of this Petition as if fully set forth herein.



23. The design registered as a trademark with respect to the recited items of Clothing Goods, is likely to cause confusion, or to cause mistake, or to deceive with respect to prior common law rights established in commerce by Petitioner for the design formative



as a trademark for apparel related to the Clothing Goods, and must be cancelled as to International Class 025, under 15 U.S.C. § 1052(d).

SECOND GROUNDS OF CANCELLATION

24. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1-21 of this Petition as if fully set forth herein.



25. The design registered as a trademark with respect to the recited items of Clothing Goods, is likely to cause confusion, or to cause mistake, or to deceive with respect to

prior statutory rights from Petitioner's incontestable, prior registration of  (Reg. No. 2,697,853) issued March 18, 2003, for "clothing, namely, shirts, and baseball caps" and must be cancelled as to International Class 025, under 15 U.S.C. § 1052(d). A TSDR status is attached.

THIRD GROUNDS OF CANCELLATION

26. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1-21 of this Petition as if fully set forth herein.

27. The design  registered as a trademark with respect to the recited items of Clothing Goods has never been used in commerce and the Registration and must be cancelled as abandoned as to International Class 025, under 15 U.S.C. § 1052(a).

FOURTH GROUNDS OF CANCELLATION

28. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1-21 of this Petition as if fully set forth herein.

29. The design  registered as a trademark has not been used in commerce for at least one continuous 3 year period between May 11, 2010, and the present date with respect to one or more of the recited items of Clothing Goods and the Registration and must be cancelled as abandoned as to such items in International Class 025, under 15 U.S.C. § 1052(a).

FIFTH GROUNDS OF CANCELLATION

30. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1-21 of this Petition as if fully set forth herein.

31. Upon information and belief, Yong S. Park declared on June 26, 2009, “Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services.” Upon information and belief, Young S. Park as President of PTE knew this statement to be false and intentionally made the statement to obtain registration under Section 44(e) of the Trademark Act.

32. Upon information and belief, Registrant made material misrepresentations of fact in the application and during prosecution as to a bona fide intent to use in US commerce as to each item of Clothing Goods in International Class 025 and the USPTO relied upon those misrepresentations when approving the opposed application for publication.

33. Upon information and belief, Registrant made these misrepresentations intentionally and with awareness of the falsity, and the entire registration must be cancelled on that basis.

WHEREFORE, Petitioner requests that  (Reg. No. 3,786,964) be fully or at least partially cancelled as to International Class 025 and that this Petition be sustained.

The required \$300 fee required for cancellation in one International Class is being paid by Deposit Account. Any additional fee required may be charged to Deposit Acct 503939.

Respectfully submitted,

Dated: July 31, 2013

/warreneolsen/
Warren E. Olsen (Reg. No. 27, 290)
Attorney of Record, DC bar member
FITZPATRICK, CELLA,
HARPER & SCINTO
1290 Avenue of the Americas
17th Floor
New York, NY 10104-3800
Tel. (212) 218-2100

Attorneys for Petitioner, JunkFood Clothing

Attachments: EXHIBITS A- E

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I hereby certify that on **July 31, 2013** I filed electronically, on ESTA of the United States Patent and Trademark Office a copy of the foregoing

PETITION FOR PARTIAL CANCELLATION

and also served a copy by e-mail [DOrlin@windelsmarx.com] with confirmation copy served by first-class mail, postage prepaid, upon the Correspondence and Representative address of record:

David Orlin,

WINDELS MARX LANE & MITTENDORF, LLP

156 West 56th Street

New York, NY 10019

/warreneolsen/

Warren E. Olsen (Reg. No. 27, 290)

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

In re:



Registration:

Reg. No.: **3,701,449**

JunkFood Clothing Company,)
(Georgia corporation))
Petitioner)
v.)
Pak's Trading Europe B.V.,)
(Netherlands corporation))
Respondent.)

Cancellation No.

Atty Docket No. **01044.013220**

PETITION FOR PARTIAL CANCELLATION

JunkFood Clothing Company believes that it is and will continue to be damaged by the



registration of (Reg. No. 3,701,449) [hereinafter "Registration"], and hereby timely petitions for a partial cancellation of the Registration as to International Class 025 under 15 USC § 1064, by and through its undersigned attorneys.

THE PARTIES AND STANDING TO CANCEL

1. Upon information and belief, the Registration was filed by, and the owner of record remains as, Pak's Trading Europe B.V., a Netherlands corporation, having a place of business at Molenvlietweg 6, 1432 GW Aalsmeer, Netherlands [hereinafter "Registrant" or "PTE"].

2. JunkFood Clothing Company [hereinafter "Petitioner" or "JF"], is a Georgia corporation having an address at 5770 W. Jefferson Blvd., Los Angeles, CA 90016-3107.

3. JF has standing and has been damaged by both oral and written allegations of infringement made by PTE against both JF and its customers between March 2012 and July 2013, based upon alleged rights in the Registration which are in fact inferior to and inconsistent with common law and statutory rights of JF arising from prior uses in commerce and prior registration.

4. JF has standing and has been damaged by the assertion of the Registration in Opposition No. 91207632 against JF's Application No. 77958107.

FACTS IN SUPPORT OF THE CANCELLATION

5. JF is a well-known manufacturer and distributor of apparel items throughout the United States that are directly competitive with, or related to, items within the recited Clothing



Goods , and has affixed the neck label  to millions of T-shirts that have been sold in commerce continuously, since 2005 and thereby has acquired prior rights in the design formative



with respect to apparel related to the Clothing Goods.



6. JF owns an incontestable, prior registration of (Reg. No. 2,697,853) issued March 18, 2003 for “clothing, namely, shirts, and baseball caps” in International Class 025. The TSDR Status for Reg. No. 2,697,853 is attached as Exhibit A.

7. The Registration was granted on October 27, 2009 upon an application filed April 9, 2009 based solely upon Section 1(a) of the Trademark Act for the recited International Class 025 goods “Clothing, namely, suits, coats, jackets, shirts, tops, t-shirts, shoes, pants, jeans, shorts, and underwear; footwear, and headgear, namely, hats, caps, and berets; shawls, scarves and gloves; rowing gear, namely, raincoats; women's clothing, namely, dresses, skirts, and blouses” [herein “Clothing Goods”].

8. The Registration is limited to the priority of its filing date, April 9, 2009.

9. The Registration is supported by Declaration, Power of Attorney or Appointment of Domestic Representative signed and dated April 7, 2009, by Young S. Park, President of PTE.

10. In his April 7, 2009 Declaration, Mr. Park declares that “the mark was . . . first used in commerce at least as early as 08/06/1984, and is now in use in such commerce.”

11. PTE has alleged in the infringement letters that it has a United States presence at PO Box 5119, Longview Texas 75608. Upon information and belief, that mailing address is owned and operated solely by Vincistar USA Inc., a Texas corporation that was incorporated only on September 12, 2008.

12. PTE has alleged in the infringement letters only ownership of the Registration,



and not any past or current use in commerce of the design as a trademark upon any specific goods.

13. Despite repeated questioning by JF and its agents between March 2012 and July 2013, PTE has not identified a single use in United States commerce of the mark claimed in the Registration. Likewise, PTE has not identified any licensee, franchisee or related company that has used the mark claimed in the Registration at any time after the date of registration.

14. Upon information and belief, PTE maintains websites <http://www.vincistar.com> and <http://www.vincistarus.com> (last visited May 21, 2013). Neither website has any retail sales capability. The <http://www.vincistarus.com> states that “the company’s [sic] current focus is on the expansion of brand awareness through licensing opportunities” (Exhibit B).

15. The website <http://www.vincistarus.com> identifies only one location in the United States at 3607 Gilmer Road, PO Box 5119, Longview Texas 75608. Page 8 of an electronic brochure, Exhibit C, accessed through <http://www.vincistarus.com>, on or about April 29, 2013, identifies that in April of 1994, Vincistar’s “Pilot Store was opened in Longview, Texas, promoted as the corner stone [sic] of Vincistar’s franchise operations.” Visits to this location by an investigator on April 29 and 30, 2013 found neither a retail apparel operation open to the public nor anything that could be described as a “Pilot Store”. A picture of the building at this location is attached as Exhibit D. A picture of a closed front door alleging a possible “showroom” is attached as Exhibit E.

16. JF, a well-known manufacturer and distributor of apparel items throughout the United States, has never encountered any of the various apparel goods claimed in the

Registration bearing a mark as claimed in the Registration, and on sale in United States commerce.

17. Upon information and belief, PTE has not sold each item of the Clothing Goods

marked with the design  as a trademark in commerce at any time, after August 6, 1984.

18. Upon information and belief, PTE has not sold each item of the Clothing Goods

marked with the design  as a trademark in commerce at any time, after April 9, 2009.

19. Upon information and belief, PTE has not sold each item of the Clothing Goods

marked with the design  as a trademark in commerce at any time, after October 27, 2009.

20. Upon information and belief, PTE has not sold one or more items of the Clothing

Goods marked with the design  as a trademark in commerce for at least one continuous three year period, between October 27, 2009, and the present date.

21. Upon information and belief, PTE as of April 9, 2009, did not have a bona fide

intention to use the design  as a trademark in commerce upon one or more items item of the Clothing Goods.

22. Upon information and belief, PTE discontinued any use of the design  as a trademark in commerce with respect to one or more items of the Clothing Goods, with no intent to resume use, between October 27, 2009, and the present date.

23. Upon information and belief, PTE has abandoned use the design  as a trademark in commerce with respect to one or more items of the Clothing Goods, with no intent to resume use, between October 27, 2009, and the present date.

FIRST GROUNDS OF CANCELLATION

24. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1-23 of this Petition as if fully set forth herein.

25. The design  registered as a trademark with respect to the recited items of Clothing Goods, is likely to cause confusion, or to cause mistake, or to deceive with respect to prior common law rights established in commerce by Petitioner for the design formative

 as a trademark for apparel related to the Clothing Goods, and must be cancelled as to International Class 025, under 15 U.S.C. § 1052(d).

SECOND GROUNDS OF CANCELLATION

26. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1-23 of this Petition as if fully set forth herein.



27. The design  registered as a trademark with respect to the recited items of Clothing Goods, is likely to cause confusion, or to cause mistake, or to deceive with respect to

prior statutory rights from Petitioner's incontestable, prior registration of  (Reg. No 2,697,853) issued March 18, 2003 for "clothing, namely, shirts, and baseball caps" and must be cancelled as to International Class 025, under 15 U.S.C. § 1052(d). A TSDR status is attached.

THIRD GROUNDS OF CANCELLATION

28. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1-23 of this Petition as if fully set forth herein.



29. The design  registered as a trademark with respect to the recited items of Clothing Goods has never been used in commerce and the Registration and must be cancelled as abandoned as to International Class 025, under 15 U.S.C. § 1052(a).

FOURTH GROUNDS OF CANCELLATION

30. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1-23 of this Petition as if fully set forth herein.



31. The design  registered as a trademark has not been used in commerce for at least one continuous 3 year period between October 27, 2009 and the present date with respect to one or more of the recited items of Clothing Goods and the Registration and must be cancelled as abandoned as to such items in International Class 025, under 15 U.S.C. § 1052(a).

FIFTH GROUNDS OF CANCELLATION

32. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1-23 of this Petition as if fully set forth herein.

33. Upon information and belief, Young S. Park declared on April 20, 2009, that “the [Registration] was . . . first used in commerce at least as early as 08/06/1984, and is now in use in such commerce.” Upon information and belief, Young S. Park as President of PTE knew this statement to be false and intentionally made the statement to obtain registration under 1(a) of the Trademark Act.

34. Upon information and belief, Registrant made material misrepresentations of fact in the application and during prosecution as to a use in US commerce as to each item of Clothing Goods in International Class 025 and the USPTO relied upon those misrepresentations when approving the Registration for publication.

35. Upon information and belief, Registrant made these misrepresentations intentionally and with awareness of the falsity, and the entire registration must be cancelled on that basis.



WHEREFORE, Petitioner requests that (Reg. No. 3,701,449) be fully or at least partially cancelled as to International Class 025 and that this Petition be sustained.

The required \$300 fee required for cancellation in one International Class is being paid by Deposit Account. Any additional fee required may be charged to Deposit Acct 503939.

Respectfully submitted,

Dated: July 31, 2013

/warreneolsen/
Warren E. Olsen (Reg. No. 27, 290)
Attorney of Record, DC bar member
FITZPATRICK, CELLA,
HARPER & SCINTO
1290 Avenue of the Americas
17th Floor
New York, NY 10104-3800
Tel. (212) 218-2100

Attorneys for Petitioner, JunkFood Clothing

Attachments: EXHIBITS A- E

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I hereby certify that on **July 31, 2013** I filed electronically, on ESTA of the United States Patent and Trademark Office a copy of the foregoing

PETITION FOR PARTIAL CANCELLATION

and also served a copy by e-mail [DOrlin@windelsmarx.com] with confirmation copy served by first-class mail, postage prepaid, upon the Correspondence and Representative address of record:

David Orlin,
WINDELS MARX LANE & MITTENDORF, LLP
156 West 56th Street
New York, NY 10019

/warreneolsen/
Warren E. Olsen (Reg. No. 27, 290)

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

In re:



Registration:

Reg. No.: **1,377,160**

| | | |
|---|---|-------------------------------------|
| JunkFood Clothing Company, (Georgia corporation) |) | |
| |) | Cancellation No. |
| Petitioner |) | |
| v. |) | Atty Docket No. 01044.013230 |
| |) | |
| Pak's Trading Europe B.V., (Netherlands corporation) |) | |
| Respondent. |) | |

PETITION FOR PARTIAL CANCELLATION

JunkFood Clothing Company believes that it is and will continue to be damaged by the



registration of (Reg. No. 1,377,160) [hereinafter "Registration"], and hereby timely petitions for a partial cancellation of the Registration as to International Class 025 under 15 USC § 1064, by and through its undersigned attorneys.

THE PARTIES AND STANDING TO CANCEL

1. Upon information and belief, the Registration was filed by, and the owner of record remains as, Pak's Trading Europe B.V., a Netherlands corporation, having a place of business at Molenvlietweg 6, 1432 GW Aalsmeer, Netherlands [hereinafter "Registrant" or "PTE"].

2. JunkFood Clothing Company [hereinafter "Petitioner" or "JF"] is a Georgia corporation having an address at 5770 W. Jefferson Blvd., Los Angeles, CA 90016-3107.

3. JF has standing and has been damaged by both oral and written allegations of infringement made by PTE against both JF and its customers between March 2012 and July 2013, based upon alleged rights in the Registration which are in fact inferior to and inconsistent with common law and statutory rights of JF arising from prior uses in commerce and prior registration.

4. JF has standing and has been damaged by the assertion of the Registration in Opposition No. 91207632 against JF's Application No. 77958107.

FACTS IN SUPPORT OF THE CANCELLATION

5. JF is a well-known manufacturer and distributor of apparel items throughout the United States that are directly competitive with, or related to, items within the recited Clothing

Goods, and has affixed the neck label  to millions of T-shirts that have been sold in commerce continuously, since 2005 and thereby has acquired prior rights in the design formative



with respect to apparel related to the Clothing Goods.



6. JF owns an incontestable, registration of (Reg. No 2,697,853) issued March 18, 2003 for “clothing, namely, shirts, and baseball caps” in International Class 025. The TSDR Status for Reg. No. 2,697,853 is attached as Exhibit A.

7. The Registration was granted on January 7, 1986, upon an application filed August 6, 1984, based solely upon Section 44(e) and a claim to ownership of the design of Benelux Reg. 0390430, dated May 18, 1983, for the recited International Class 025 goods “ready-made garments and casual wear”. During prosecution of the Registration the goods in International Class 025 were amended to read “Men’s, Women’s and Children’s Cloth and Leather Jackets, Coats and Trousers; Cloth and Knitted Shirts and Shorts; and Underwear” [herein “Clothing Goods”].



8. The Registration is limited to the priority of its filing date, August 6, 1984.

9. The Registration is supported by Declaration, Power of Attorney or Appointment of Domestic Representative signed and dated July 25, 1984, by Young S. Park, President of PTE.

10. In his July 25, 1984 Declaration, Mr. Park declares that “[t]he mark is used by applying it to stationery and goods.”

11. Mr. Park submitted an Affidavit signed and dated February 7, 1984, in which he affirms that “[t]he mark is used on labels and hang-tags attached to the goods and by applying it

to the goods. . . . Each of [the submitted specimens] was in use in commerce with the United States prior to the date of this application, August, [sic] 6, 1984.”

12. Mr. Park submitted an Affidavit signed and dated December 19, 1991, in which he affirms that “the mark has been in continuous use in commerce with the United States since January 7, 1986, . . . in International Class 25 for cloth and knitted shirts and shorts; [sic] and underwear; . . . that such mark is still in use in commerce with the United States as evidenced by the accompanying specimens for each class showing the mark as currently used on labels and hang tags attached to the goods and by applying it to the goods.” The Examiner made checkmarks over each of these statements and initialed the Affidavit.

13. David Orlin, purporting himself as PTE’s trademark attorney, submitted a Combined Declaration of Use in Commerce/Application for Renewal of Registration of Mark Under §§ 8 & 9 signed and dated January 5, 2006, in which he declared that “[t]he owner is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimens(s) showing the mark as currently used in commerce.”

14. Upon information and belief, the specimens submitted for class 25, “Men’s cloth trousers,” in the January 5, 2006 Application for Renewal are images of the same specimens submitted with the original application.

15. PTE has alleged in the infringement letters that it has a United States presence at PO Box 5119, Longview Texas 75608. Upon information and belief, that mailing address is owned and operated solely by Vincistar USA Inc., a Texas corporation that was incorporated only on September 12, 2008.

16. PTE has alleged in the infringement letters only ownership of the Registration, and not any past or current use in commerce of the design  as a trademark upon any specific goods.

17. Despite repeated questioning by JF and its agents between March 2012 and July 2013, PTE has not identified a single use in United States commerce of the mark claimed in the Registration. Likewise, PTE has not identified any licensee, franchisee or related company that has used the mark claimed in the Registration at any time after the date of registration.

18. Upon information and belief, PTE maintains websites <http://www.vincistar.com> and <http://www.vincistarus.com> (last visited May 21, 2013). Neither website has any retail sales capability. The <http://www.vincistarus.com> states that “the company’s [sic] current focus is on the expansion of brand awareness through licensing opportunities” (Exhibit B).

19. The website <http://www.vincistarus.com> identifies only one location in the United States at 3607 Gilmer Road, PO Box 5119, Longview Texas 75608. Page 8 of an electronic brochure, Exhibit C, accessed through <http://www.vincistarus.com>, on or about April 29, 2013, identifies that in April of 1994, Vincistar’s “Pilot Store was opened in Longview, Texas, promoted as the corner stone [sic] of Vincistar’s franchise operations.” Visits to this location by an investigator on April 29 and 30, 2013 found neither a retail apparel operation open to the public nor anything that could be described as a “Pilot Store”. A picture of the building at this location is attached as Exhibit D. A picture of a closed front door alleging a possible “showroom” is attached as Exhibit E.

20. JF, a well-known manufacturer and distributor of apparel items throughout the United States, has never encountered any of the various apparel goods claimed in the

Registration bearing a mark as claimed in the Registration, and on sale in United States commerce.

21. Upon information and belief, PTE has not sold each item of the Clothing Goods

marked with the design  as a trademark in commerce at any time, after January 7, 1986.

22. Upon information and belief, PTE has not sold one or more items of the Clothing

Goods marked with the design  as a trademark in commerce for at least one continuous three year period, between January 7, 1986, and the present date.

23. Upon information and belief, PTE as of August 6, 1984, did not have a bona fide

intention to use the design  as a trademark in commerce upon one or more items item of the Clothing Goods.

24. Upon information and belief, PTE discontinued any use of the design  as a

trademark in commerce with respect to one or more items of the Clothing Goods, with no intent to resume use, between January 7, 1986, and the present date.

25. Upon information and belief, PTE has abandoned use the design  as a

trademark in commerce with respect to one or more items of the Clothing Goods, with no intent to resume use, between January 7, 1986, and the present date.

FIRST GROUNDS OF CANCELLATION

26. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1-25 of this Petition as if fully set forth herein.



27. The design  registered as a trademark with respect to the recited items of Clothing Goods has never been used in commerce and the Registration and must be cancelled as abandoned as to International Class 025, under 15 U.S.C. § 1052(a).

SECOND GROUNDS OF CANCELLATION

28. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1-25 of this Petition as if fully set forth herein.



29. The design  registered as a trademark has not been used in commerce for at least one continuous 3 year period between January 7, 1986, and the present date with respect to one or more of the recited items of Clothing Goods and the Registration and must be cancelled as abandoned as to such items in International Class 025, under 15 U.S.C. § 1052(a).

THIRD GROUNDS OF CANCELLATION

30. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1-25 of this Petition as if fully set forth herein.

31. Upon information and belief, Young S. Park affirmed on December 19, 1991, that “the [Registration] has been in continuous use in commerce with the United States since January 7, 1986, . . . in International Class 25 for cloth and knitted shirts and shorts; [sic] and

underwear; . . . that [the Registration] is still in use in commerce with the United States as evidenced by the accompanying specimens for each class showing the mark as currently used on labels and hang tags attached to the goods and by applying it to the goods.” Upon information and belief, Young S. Park as President of PTE knew this statement to be false and intentionally made the statement to obtain renewal under Section 8 of the Trademark Act.

32. Upon information and belief, David Orlin declared on January 5, 2006, that “[t]he owner is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimens(s) showing the mark as currently used in commerce.” Upon information and belief, David Orlin as attorney and agent of PTE knew this statement to be false and intentionally made the statement to obtain renewal under Section 8 of the Trademark Act.

33. Upon information and belief, Registrant made material misrepresentations of fact in the application and during prosecution as to a use in US commerce as to each item of Clothing Goods in International Class 025 and the USPTO relied upon those misrepresentations when approving the Registration for incontestability on April 21, 1992 and renewing the Registration on April 19, 2006.

34. Upon information and belief, Registrant made these misrepresentations intentionally and with awareness of the falsity, and the entire registration must be cancelled on that basis.



WHEREFORE, Petitioner requests that  (Reg. No. 1,377,160) be fully or at least partially cancelled as to International Class 025 and that this Petition be sustained.

The required \$300 fee required for cancellation in one International Class is being paid by Deposit Account. Any additional fee required may be charged to Deposit Acct 503939.

Respectfully submitted,

Dated: July 31, 2013

/warreneolsen/
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Attachments: EXHIBITS A- E

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I hereby certify that on **July 31, 2013** I filed electronically, on ESTA of the United States Patent and Trademark Office a copy of the foregoing

PETITION FOR PARTIAL CANCELLATION

and also served a copy by e-mail [DOrlin@windelsmarx.com] with confirmation copy served by first-class mail, postage prepaid, upon the Correspondence and Representative address of record:

David Orlin,
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/warreneolsen/
Warren E. Olsen (Reg. No. 27, 290)