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Filing date: **10/18/2013**

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	Morris Visitor Publications, LLC		
Entity	Limited Liability Company	Citizenship	Georgia
Address	725 Broad Street AUGUSTA, GA 30901 UNITED STATES		

Attorney information	Courtney L. Bodie Moses Law Group, LLC 6 George C. Wilson Court Augusta, GA 30909 UNITED STATES CLB@moseslawgroup.com Phone:(706) 860-8030		
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**Registration Subject to Cancellation**

Registration No	3600046	Registration date	03/31/2009
Registrant	GMA Accessories, Inc. 9th Floor 1 East 33rd Street New York, NY 10005 UNITED STATES		

**Goods/Services Subject to Cancellation**

<p>Class 035. First Use: 1994/02/28 First Use In Commerce: 2006/07/01 All goods and services in the class are cancelled, namely: Advertising and marketing; Product merchandising; General business merchandising services, namely, marketing; Wholesale distributorships featuring clothing, handbags, shoes, belts, toys, cosmetics, rain gear, hats, boots, slippers, beach gear, bedding, bath accessories, sunglasses, playthings, dolls, lingerie, leather goods, home fashions, room décor, hosiery, blankets, throws, pillows, pet accessories, children's wear; Wholesale stores featuring clothing, handbags, shoes, belts, toys, cosmetics, rain gear, hats, boots, slippers, beach gear, bedding, bath accessories, sunglasses, playthings, dolls, lingerie, leather goods, home fashions, room décor, hosiery, blankets, throws, pillows, pet accessories, children's wear; Fashion show exhibitions for commercial purposes</p>
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**Grounds for Cancellation**

Dilution	Trademark Act section 43(c)
Other	Respondent's Registration covers advertising and marketing services in Class 35 that primarily benefits Respondent by advertising and marketing its own goods, and do not provide a registrable service.

## Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2546622	Application Date	10/16/2000
Registration Date	03/12/2002	Foreign Priority Date	NONE
Word Mark	CHARLOTTE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1966/00/00 First Use In Commerce: 1966/00/00 Magazine covering Charlotte business, dining, medical services, sports, local personalities, and general interest		

Attachments	Petition to Cancel Reg No 3600046_final.pdf(283660 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	//CLBodie/20131018//
Name	Courtney L. Bodie
Date	10/18/2013

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

MORRIS VISITOR PUBLICATIONS, LLC,            )  
  )  
          Petitioner,                                    )  
  )  
v.    )  
  )  
GMA ACCESSORIES, INC.,                        )  
  )  
          Respondent.                                )

Cancellation No. \_\_\_\_\_

**PETITION FOR CANCELLATION**

Petitioner MORRIS VISITOR PUBLICATIONS, LLC (hereinafter "Petitioner"), believes that it is or will be damaged, including as a result of dilution under 15 USC 1125(c), by Registration No. **3600046** issued on the Principal Register on March 31, 2009, to GMA ACCESSORIES, INC. (hereinafter "Respondent") for the trademark referred to as "CHARLOTTE" ("Respondent's Registration"). Respondent's Registration is registered in **Class 35** for:

Advertising and marketing; Product merchandising; General business merchandising services, namely, marketing; Wholesale distributorships featuring clothing, handbags, shoes, belts, toys, cosmetics, rain gear, hats, boots, slippers, beach gear, bedding, bath accessories, sunglasses, playthings, dolls, lingerie, leather goods, home fashions, room décor, hosiery, blankets, throws, pillows, pet accessories, children's wear; Wholesale stores featuring clothing, handbags, shoes, belts, toys, cosmetics, rain gear, hats, boots, slippers, beach gear, bedding, bath accessories, sunglasses, playthings, dolls, lingerie, leather goods, home fashions, room décor, hosiery, blankets, throws, pillows, pet accessories, children's wear; Fashion show exhibitions for commercial purposes.

As grounds for the Petition, it is alleged that:

- (1) Petitioner is a limited liability company organized and existing under the laws of the State of Georgia, located and doing business at 725 Broad Street, Augusta, Georgia 30901.
- (2) On information and belief, Respondent is a New York corporation, having its principal location at 1 East 33<sup>rd</sup> Street, 9<sup>th</sup> Floor, New York, NY 10005.

(3) Petitioner is the owner and publisher of Charlotte® magazine, located in Charlotte, North Carolina, which has been published continuously since 1966.

(4) Petitioner is the owner of **CHARLOTTE**, U.S. Reg. No. **2546622**, for “Magazine covering Charlotte business, dining, medical services, sports, local personalities, and general interest,” in Class 016, which was registered on March 12, 2002;

(5) Petitioner is the owner of **CHARLOTTE**, U.S. Reg. No. **4382457**, which was registered on August 13, 2013, for

- a. “Providing an on-line computer database featuring trade information in the field of travel information service,” in Class 035;
- b. “Electronic delivery of images and photographs via a global computer network,” in Class 038;
- c. “Providing an on-line searchable computer database featuring information on travel; Provision of travel information; Travel information; Travel information services,” in Class 039;
- d. “Entertainment services, namely, providing on-line reviews of fashion, shopping, music, nightlife, landmarks, art, attractions, entertainment, events, hotels, neighborhoods, transportation, sports, spas, and salons offered via internet and mobile phones; On-line publication of books and magazines, featuring regionalized visitor information on restaurants, fashion, shopping, entertainment, events, music, landmarks, art, attractions, hotels, neighborhoods, transportation, sports, spas, and salons offered via Internet and mobile phones,” in Class 041; and
- e. “Providing information and advice on hotels and restaurants to tourists and business travelers; Providing information, news and commentary in the field of dining; Providing on-line reviews of restaurants and hotels; Providing reviews of restaurants; Providing on-line reviews of restaurants via internet and mobile phones,” in Class 043.

(6) Petitioner is also the owner of **CHARLOTTE WEDDING**, U.S. Reg. No. **3783033** for “Magazines featuring information on bridal fashions and trends, registry products and sources, food, décor, and music ideas, honeymoons and travel destinations, beauty trends, and planning tips in and around Charlotte, NC,” in Class 016, which was registered on April 27, 2010;

(7) Additionally, Petitioner is the owner of the application to register **CHARLOTTE WEDDING**, Ser. No. 85664120. That application covers, among other things, the following Class 35 services:

“Advertising, marketing and promotion services; Advertising, marketing, and promoting the goods and services of others via the Internet, smart phones and mobile computing devices; Dissemination of advertising for others via public and private wireless networks for display on mobile devices; Dissemination

of advertising for others via the Internet; On-line advertising on computer communication networks; On-line advertising on computer networks; On-line advertising services for others; Online advertisements; Online advertising and promotional services; Online advertising via a computer communications network; Promoting the goods and services of others by means of distributing advertising on the Internet; Providing a web site which features advertisements for the goods and services of others on a global computer network; Provision of advertising space by electronic means and global information networks.”.

(8) Petitioner provides such advertising and marketing services for others through its CHARLOTTE WEDDING publication, which is provided to consumers through print, mobile and online media.

(9) An Office Action has issued for Petitioner’s application, which cited Respondent’s Registration as the basis to deny Petitioner registration in Class 35.

(10) If Respondent retains such rights as conferred under the Principal Register of the Trademark Act of 1946 for Reg. No. 3600046, Petitioner will be unable to obtain registration of Class 35 advertising and marketing services for others as applied for in Ser. No. 85664120.

(11) Petitioner asserts that **Respondent’s Registration was improperly granted** and should be canceled for two (2) reasons.

(12) First, Respondent failed to overcome the likelihood of confusion with Reg. No. 2743638.

(13) During the prosecution of the application which resulted in Reg. No.3600046, the assigned examining attorney cited a third-party registration (Reg. No. 2743638 for “CHARLOTTE”) as a basis to oppose registration.

(14) In response, Respondent provided a co-existence agreement as support to allow the applied-for mark to continue through to registration.

(15) That co-existence agreement was entered into on or around May 15, 2007. However, Respondent did not file its Application for Reg. No. 3600046 until October 26, 2007.

Thus, that co-existence agreement could not have contemplated the Examining Attorney's initial refusal of Reg. No. 3600046 due to likelihood of confusion with Reg. No. 2743638.

(16) Additionally, that co-existence agreement did not refer to Respondent's Class 35 services covered by Reg. No. 3600046. That co-existence agreement only provided the Respondent's consent and the consent of the Registrant of Reg. No. 2743638 for goods covered in Classes **24** and **25**. Thus, Respondent failed to overcome the initial basis on which the mark was refused.

(17) Second, Respondent's Registration should be canceled because it fails to serve as a "service mark" for some of the Class 35 services.

(18) A service mark can only be registered for activities that constitute services as contemplated by the Trademark Act. T.M.E.P. 1301.01 (citing 15 U.S.C. §§1051, 1052, 1053, and 1127.)

(19) "To be a service, an activity must be primarily for the benefit of someone other than the applicant." T.M.E.P. 1301.01(a)(ii) (emphasis added).

(20) Respondent is not providing advertising "services" to others.

(21) While an advertising agency provides a service when it promotes the goods or services of its clients, a company that promotes the sale of its own goods or services is doing so for its own benefit rather than rendering a service for others. T.M.E.P. 1301.01(a)(ii) (citing *In re Reichhold Chemicals, Inc.*, 167 USPQ 376 (TTAB 1970)).

(22) If the activity primarily benefits applicant, it is **not** a registrable service even if others derive an incidental benefit. *In re Dr. Pepper Co.*, 836 F.2d 508, 5 USPQ2d 1207 (Fed. Cir. 1987) (contest promoting applicant's goods not a service, even though benefits accrue to winners of contest); *In re Alaska Northwest Publishing Co.*, 212 USPQ 316 (TTAB 1981).

(23) An activity that is merely incidental to the sale of goods is not independently recognized as a service unless that activity is something plainly different from any activity typically involved in promoting the sale of such goods. In re Radio Corp. of Am., 98 U.S.P.Q. 157, 158 (CCPA 1953) (supplying radio stations with packaged radio programs of records is mere advertising of record company, not a “service” to consumers); In re Orion Research Inc., 187 U.S.P.Q. 485, 487 (CCPA 1975) (the repair or replacement of one’s own merchandise or “guaranteeing” same held not a registrable “service” because it is normally expected by purchasers from the purveyor of goods).

(24) Registrant has eight (8) other registrations for “CHARLOTTE,” all of which cover **goods** sold by Registrant. Those registrations are:

- a. Reg. No. **2217341** for “sacks and bags, namely, handbags made of textiles and beads” in Class 018;
- b. Reg. No. **2216405** for “HAIR ACCESSORIES, namely, hair clips, scrunchies, ribbons and braids” in Class 026;
- c. Reg. No. **2535454** for “clothing, footwear and headgear, namely hats, scarves, gloves and socks” in Class 025;
- d. Reg. No. **2561025** for “sunglasses” in Class 009;
- e. Reg. No. **3500599** for “Bath linen; Bath sheets; Bath towels; Beach towels; Bed blankets; Bed linen; Bed sheets; Bed spreads; Blanket throws; Chenille fabric; Children's blankets; Children's towels; Cloth coasters; Cloth napkins for removing make-up; Comforters; Contoured mattress covers; Cotton base mixed fabrics; Cotton fabric; Covered rubber yarn fabrics; Crepe cloth; Crib bumpers; Crib canopies; Curtain fabric; Curtain loops of textile material; Curtains; Curtains made of textile fabrics; Diaper changing mats; Diaper changing pads not of paper; Dining linens; Dish cloths; Draperies; Dust ruffles; Duvet covers; Duvets; Eiderdown covers;

Eiderdowns; Fabric diaper stackers; Fabric flags; Fabric for boots and shoes; Fabric of imitation animal skin; Fabric table runners; Fabric table toppers; Fabric valances; Fabric window coverings and treatments, namely curtains, draperies, sheers, swags and valances; Face towels; Feather beds; Felt and non-woven textile fabrics; Fiberglass fabrics for textile use; Fireproof upholstery fabrics; Fitted toilet lid covers; Flannel; Flax fabrics; Frieze; Gauze fabric; Gift wrap of fabric; Hand towels; Hand-towels made of textile fabrics; Hemp base mixed fabrics; Hemp yarn fabrics; Household linen; Inorganic fiber mixed fabrics; Jeans fabric; Jersey fabrics for clothing; Jersey material; Jute fabrics; Kitchen linens; Kitchen towels; Knitted fabrics; Knitted fabrics of chemical-fiber yarn; Knitted fabrics of cotton yarn; Knitted fabrics of wool yarn; Labels of cloth; Lap rugs; Mixed fiber fabrics; Narrow woven fabrics; Net curtains; Nylon fabric; Oil cloths; Pillow cases; Pillow covers; Pillow shams; Pillowcases; Place mats of textile material; Polyester fabric; Pot holders; Puffs; Quilts; Ramie fabric; Rayon fabric; Receiving blankets. Regenerated fiber yarn fabrics; Rubberized cloths; Sackcloth; Sail cloth; Semi-synthetic fiber fabrics; Shams; Shower curtains; Silk-cotton mixed fabrics; Synthetic fiber fabrics; Table cloths not of paper; Table linen; Taffeta; Tapestries of textile; Terry towels; Textile fabric of animal skins imitations; Textile fabrics for home and commercial interiors; Textile fabrics for lingerie; Textile fabrics for the manufacture of clothing; Textile labels; Throws; Ticking fabric; Towel sets; Towels; Traced cloths for embroidery; Tricot quilts; Tulle; Unfitted fabric furniture covers; Upholstery fabrics; Velvet; Wash cloths; Washcloths; Washing gloves; Washing mitts; Window curtains; Wool base mixed fabrics; Wool yarn fabrics; Woolen fabric; Woollen blankets; Worsted fabrics; Woven fabrics; Zephyr fabric” in Class 024;

- f. Reg. No. **3453664** for “Leather and imitation leather bags; All-purpose carrying bags; Clutch bags; Messenger bags; Fur; Shoulder bags; Pet clothing; Pet collar accessories, namely, bows and charms; Backpacks; Beach bags” in Class 018;

- g. Reg. No. **3922088** for “Bonnet pins of precious metal; Bracelets; Bracelets of precious metal; Brooches; Buckles for watchstraps; Charms; Chokers; Costume jewelry; Cuff-links; Earrings; Gemstones; Gold and its alloys; Hat pins of precious metal; Iridium and its alloys; Jewelry; Jewelry for the head; Jewelry pins for use on hats; Lapel pins; Necklaces; Ornamental pins; Ornaments of precious metal; Osmium and its alloys; Pendants; Picture frames of precious metal; Platinum and its alloys; Precious metal alloys; Purses and wallets of precious metal; Rhodium and its alloys; Rings being jewelry; Silver and its alloys; Tiaras.” in Class 014;
- h. Reg. No. **3242358** for “Bags for securing valuables; Bands for wrapping or binding; Belts, not of metal, for handling loads; Fabric and polyester mesh net used for storing toys and other household items; Garment bags for storage; Mesh bags for storage; Multi-purpose cloth bags; Packaging bags of textile material; Rice straw bags (kamasu); Shoe bags for storage; String. ” in Class 022;

(25) Thus, Respondent’s use of CHARLOTTE to provide advertising and marketing services in Class 35 **primarily benefits Respondent** by encouraging sales of its own CHARLOTTE-branded clothing and accessories.

(26) Accordingly, it appears that Reg. No. 3600046 was issued in error for the services “**Advertising and marketing; Product merchandising; General business merchandising services, namely, marketing;**” and should be canceled.

(27) By virtue of the foregoing, if Respondent retains such rights as conferred under the Principal Register of the Trademark Act of 1946 for Reg. No. 3600046, Petitioner’s rights will be damaged and Respondent will enjoy unlawful gain and advantage to which it is not entitled.

WHEREFORE, Petitioner believes and avers that it is being, and will continue to be, damaged by the continued registration of Respondent’s Registration (Reg. No. 3600046) for the advertising and marketing services as aforesaid, and prays that said registration be canceled.

In the alternative, Petitioner prays that Respondent's Registration be amended to delete the following Class 35 services: "**Advertising and marketing; Product merchandising; General business merchandising services, namely, marketing**".

Petitioner hereby appoints TIMOTHY E. MOSES, a member of the bars of Georgia and South Carolina, and COURTNEY L. BODIE, a member of the bar of Georgia, each having an office at 6 George C. Wilson Court, Augusta, Georgia 30909, its attorneys to prosecute this cancellation proceeding and to transact all relevant business in and before the U.S. Patent and Trademark Office in connection therewith.

Please address all correspondence to:

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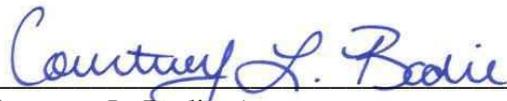
The filing fee for this cancellation in the amount of \$300.00 has been submitted simultaneously herewith.

Respectfully submitted,

Date: October 18, 2013

By:   
Timothy E. Moses ([TEMoses@moseslawgroup.com](mailto:TEMoses@moseslawgroup.com))

Date: October 18, 2013

By:   
Courtney L. Bodie ([CLB@moseslawgroup.com](mailto:CLB@moseslawgroup.com))

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