

ESTTA Tracking number: **ESTTA582021**

Filing date: **01/15/2014**

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	CapeKids, LLC		
Entity	Limited Liability Company	Citizenship	Massachusetts
Address	820 Main Street Cotuit, MA 02635 UNITED STATES		

Attorney information	Aaron Y. Silverstein Saunders & Silverstein LLP 14 Cedar Street, Suite 224 Amesbury, MA 01913-1831 UNITED STATES trademarks@massiplaw.com, asilverstein@massiplaw.com Phone:+1.978.463.9100		
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**Registration Subject to Cancellation**

Registration No	4434205	Registration date	11/12/2013
Registrant	Amidon, Karin 185 North Main Street South Yarmouth, MA 02664 USX		

**Goods/Services Subject to Cancellation**

Class 025. First Use: 2013/05/28 First Use In Commerce: 2013/06/04  
All goods and services in the class are cancelled, namely: Clothing, namely, shirts, pants, shorts, skirts, tunics; footwear, namely, sandals; and headgear, namely, caps, visors and headbands

**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Petitioner as Basis for Cancellation**

U.S. Registration No.	3839135	Application Date	08/26/2009
Registration Date	08/24/2010	Foreign Priority Date	NONE
Word Mark	CAPEKIDS		

Design Mark	<b>CAPEKIDS</b>
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2009/07/31 First Use In Commerce: 2009/07/31 Retail store services featuring children's clothing; Online retail store services featuring children's clothing

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CAPEKIDS		
Goods/Services	Apparel; Children's apparel		

Attachments	77813260#TMSN.gif( bytes ) 20140115 capekids cancellation final.pdf(94402 bytes ) ex a final.pdf(618903 bytes ) exhibit b final.pdf(261482 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	/asilverstein/
Name	Aaron Y. Silverstein
Date	01/15/2014

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

<p>CAPEKIDS, LLC,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>KARIN AMIDON,</p> <p style="text-align: center;">Registrant.</p>	<p>Cancellation No. _____</p> <p>Registration No.: 4,434,205</p> <p>Mark: CAPE COD KID</p> <p>Registration Date: November 12, 2013</p>
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**PETITION FOR CANCELLATION**

CapeKids, LLC (“CapeKids”), believes that it is, and will continue to be, damaged by U.S. Reg. No. 4,434,205 for the trademark CAPE COD KID for “Clothing, namely, shirts, pants, shorts, skirts, tunics; footwear, namely, sandals; and headgear, namely, caps, visors and headbands,” in Class 25 and hereby petitions for cancellation of the same. As grounds for its cancellation, CapeKids alleges the following, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to other matters:

**CapeKids, Its Trademarks, and Its Products and Services**

1. Petitioner CapeKids is a Massachusetts Limited Liability Company with a principal place of business at 820 Main Street, Cotuit, Massachusetts 02635.
2. Petitioner, or its predecessor in interest, has used the CAPEKIDS trademark in the United States in connection with online and brick-and-mortar retail store services featuring children’s clothing since at least as early as July 31, 2009.
3. Petitioner, or its predecessor in interest, has used the CAPEKIDS trademark in the United States on apparel since at least as early as February 2011.

4. Petitioner is the owner of U.S. Registration No. 3,839,135 for the mark CAPEKIDS, which is registered in connection with “Retail store services featuring children’s clothing; Online retail store services featuring children’s clothing” in International Class 35. *See* Exhibit A, a printout of the current status and title of the registration from the USPTO TSDR database.

5. Petitioner has also established strong common law rights in the CAPEKIDS designation in connection with apparel. *See* Exhibit B, an example of Petitioner’s use of CAPEKIDS on apparel.

6. Since Petitioner’s adoption of the CAPEKIDS trademark in connection with apparel and retail services, Petitioner has since used the CAPEKIDS trademark in interstate commerce continuously and extensively in connection with such goods and services.

7. Through extensive advertising, promotion, and use of its CAPEKIDS trademark, Petitioner has built a strong reputation for high quality goods and services offered thereunder, and Petitioner’s CAPEKIDS marks have acquired substantial strength, goodwill, distinctiveness, and secondary meaning, as indicating the source of the goods and services provided by Petitioner.

#### **Registrant and Her Mark**

8. Upon information and belief, Registrant Karin Amidon is an individual with an address at 185 North Main Street, South Yarmouth, Massachusetts 02664.

9. Registrant is the owner of U.S. Reg. No. 4,434,205 for the trademark CAPE COD KID for “Clothing, namely, shirts, pants, shorts, skirts, tunics; footwear, namely, sandals; and headgear, namely, caps, visors and headbands” in International Class 25.

10. Application Serial No. 85/950,495 that resulted in Registration No. 4,434,205 was filed on June 4, 2013, based on Section 1(a) of the Trademark Act and claiming a first use date of May 28, 2013, and a first use in commerce date of June 4, 2013.

11. U.S. Reg. No. 4,434,205 was granted registration on the Supplemental Register on November 12, 2013.

**Count One**  
**Likelihood of Confusion, 15 U.S.C. § 1052(d)**

12. Petitioner repeats and realleges the allegations set forth in Paragraphs 1 through 11.

13. Petitioner's use and registration of its CAPEKIDS trademark predate Registrant's May 28, 2013 claimed date of first use and her June 4, 2013 filing date.

14. The goods identified in Registrant's CAPE COD KID Registration No. 4,434,205 are identical to those with which Petitioner uses its CAPEKIDS common law mark.

15. Moreover, the goods identified in Registrant's CAPE COD KID Registration are related and complimentary to the services identified in Petitioner's CAPEKIDS Registration No. 3,839,135.

16. Registrant's CAPE COD KID mark so resembles Petitioner's CAPEKIDS trademark, as to be likely, when applied to Registrant's goods, to cause confusion, to cause mistake, or to deceive under Section 2(d) of the Lanham Act, as amended, 15 U.S.C. § 1052(d).

WHEREFORE, Petitioner believes that it will continue to be damaged by the registration of the mark shown in U.S. Reg. No. 4,434,205 and respectfully requests that the Petition for Cancellation be sustained and that U.S. Reg. No. 4,434,205 be cancelled.

Respectfully submitted,

Dated: January 15, 2014

By: /s/Aaron Y. Silverstein  
Aaron Y. Silverstein  
Saunders & Silverstein LLP  
14 Cedar Street, Suite 224  
Amesbury, MA 01913  
Tel.: (978) 463-9130  
Email: asilverstein@massiplaw.com

Attorneys for Petitioner  
CAPEKIDS, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on January 15, 2014, a true and complete copy of the foregoing Petition for Cancellation, along with all exhibits thereto, has been served on Registrant and Registrant's counsel, via first class mail, postage pre-paid to:

Karin Amidon  
185 North Main Street  
South Yarmouth, Massachusetts 02664

Gordon Carpenter  
481 Buck Island Rd., Apt. 3B  
West Yarmouth, Massachusetts 02673-3330

/s/Aaron Y. Silverstein  
Aaron Y. Silverstein

# **EXHIBIT A**

**STATUS**    **DOCUMENTS**[Back to Search](#)

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**Generated on:** This page was generated by TSDR on 2014-01-15 15:58:20 EST**Mark:** CAPEKIDS**CAPEKIDS****US Serial Number:** 77813260**Application Filing Date:** Aug. 26, 2009**US Registration Number:** 3839135**Registration Date:** Aug. 24, 2010**Filed as TEAS Plus:** Yes**Currently TEAS Plus:** Yes**Register:** Principal**Mark Type:** Service Mark**Status:** Registered. The registration date is used to determine when post-registration maintenance documents are due.**Status Date:** Aug. 24, 2010**Publication Date:** Apr. 06, 2010**Notice of Allowance Date:** Jun. 01, 2010**Mark Information****Mark Literal Elements:** CAPEKIDS**Standard Character Claim:** Yes. The mark consists of standard characters without claim to any particular font style, size, or color.**Mark Drawing Type:** 4 - STANDARD CHARACTER MARK**Goods and Services****Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks \*..\* identify additional (new) wording in the goods/services.

**For:** Retail store services featuring children's clothing; Online retail store services featuring children's clothing**International Class(es):** 035 - Primary Class**U.S Class(es):** 100, 101, 102

**Class Status:** ACTIVE**Basis:** 1(a)**First Use:** Jul. 31, 2009**Use in Commerce:** Jul. 31, 2009

## Basis Information (Case Level)

**Filed Use:** No**Currently Use:** Yes**Amended Use:** No**Filed ITU:** Yes**Currently ITU:** No**Amended ITU:** No**Filed 44D:** No**Currently 44D:** No**Amended 44D:** No**Filed 44E:** No**Currently 44E:** No**Amended 44E:** No**Filed 66A:** No**Currently 66A:** No**Filed No Basis:** No**Currently No Basis:** No

## Current Owner(s) Information

**Owner Name:** CAPEKIDS, LLC**Owner Address:** 820 MAIN STREET  
COTUIT, MASSACHUSETTS 02635  
UNITED STATES**Legal Entity Type:** LIMITED LIABILITY COMPANY**State or Country Where  
Organized:** MASSACHUSETTS

## Attorney/Correspondence Information

### Attorney of Record

**Attorney Name:** Aaron Silverstein**Docket Number:** 375.400**Attorney Primary Email  
Address:** [trademarks@massiplaw.com](mailto:trademarks@massiplaw.com)**Attorney Email Authorized:** No

### Correspondent

**Correspondent** Aaron Silverstein

**Name/Address:** Saunders & Silverstein LLP  
 14 Cedar Street, Suite 224  
 Amesbury, MASSACHUSETTS 01913-1831  
 UNITED STATES

**Phone:** 978-463-9100

**Fax:** 978-463-9109

**Correspondent e-mail:** [trademarks@massiplaw.com](mailto:trademarks@massiplaw.com)

**Correspondent e-mail** No  
**Authorized:**

**Domestic Representative - Not Found**

## Prosecution History

Date	Description	Proceeding Number
Jan. 08, 2014	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Aug. 24, 2010	REGISTERED-PRINCIPAL REGISTER	
Jul. 23, 2010	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Jul. 22, 2010	LAW OFFICE REGISTRATION REVIEW COMPLETED	77312
Jul. 22, 2010	ASSIGNED TO LIE	77312
Jul. 07, 2010	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Jul. 02, 2010	STATEMENT OF USE PROCESSING COMPLETE	61813
Jun. 10, 2010	USE AMENDMENT FILED	61813
Jul. 02, 2010	CASE ASSIGNED TO INTENT TO USE PARALEGAL	61813
Jun. 10, 2010	TEAS STATEMENT OF USE RECEIVED	
Jun. 01, 2010	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Apr. 06, 2010	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Apr. 06, 2010	PUBLISHED FOR OPPOSITION	
Mar. 01, 2010	LAW OFFICE PUBLICATION REVIEW COMPLETED	78289
Feb. 25, 2010	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 25, 2010	USE AMENDMENT ACCEPTED	76746
Feb. 25, 2010	TEAS/EMAIL CORRESPONDENCE ENTERED	78289

Feb. 25, 2010	CORRESPONDENCE RECEIVED IN LAW OFFICE	78289
Feb. 21, 2010	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Feb. 18, 2010	ATTORNEY REVOKED AND/OR APPOINTED	
Feb. 18, 2010	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Dec. 03, 2009	COMBINED EXAMINER'S AMENDMENT/PRIORITY ACTION ENTERED	78289
Dec. 02, 2009	ASSIGNED TO LIE	78289
Dec. 02, 2009	NOTIFICATION OF EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED	6326
Dec. 02, 2009	EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED	6326
Dec. 02, 2009	EXAMINERS AMENDMENT AND/OR PRIORITY ACTION - COMPLETED	76746
Dec. 01, 2009	ASSIGNED TO EXAMINER	76746
Sep. 04, 2009	AMENDMENT TO USE PROCESSING COMPLETE	88889
Sep. 04, 2009	USE AMENDMENT FILED	88889
Sep. 03, 2009	TEAS AMENDMENT OF USE RECEIVED	
Sep. 02, 2009	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 01, 2009	NEW APPLICATION ENTERED IN TRAM	

## TM Staff and Location Information

### TM Staff Information - None

### File Location

**Current Location:** PUBLICATION AND ISSUE SECTION

**Date in Location:** Jul. 22, 2010

## Assignment Abstract Of Title Information

### Summary

[Conveyance Filter](#)

**Total Assignments:** 1

**Registrant:** Devlin, Lorri

### Assignment 1 of 1

**Conveyance:** NUNC PRO TUNC ASSIGNMENT EFFECTIVE 09/28/2009

Reel/Frame: [5177/0555](#)

Pages: 2

Date Recorded: Dec. 19, 2013

Supporting Documents: [assignment-tm-5177-0555.pdf](#)**Assignor**Name: [DEVLIN, LORRI](#)

Execution Date: Dec. 18, 2013

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

**Assignee**Name: [CAPEKIDS, LLC](#)

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where  
Organized: MASSACHUSETTSAddress: 820 MAIN STREET  
COTUIT, MASSACHUSETTS 02635**Correspondent**

Correspondent Name: AARON Y. SILVERSTEIN

Correspondent Address: 14 CEDAR STREET, SUITE 224  
AMESBURY, MA 01913-1831**Domestic Representative - Not Found**[Proceedings - Click to Load](#)

United States of America  
United States Patent and Trademark Office

CAPEKIDS

**Reg. No. 3,839,135**

DEVLIN, LORRI (UNITED STATES INDIVIDUAL)

**Registered Aug. 24, 2010**

820 MAIN STREET  
COTUIT, MA 02536

**Int. Cl.: 35**

FOR: RETAIL STORE SERVICES FEATURING CHILDREN'S CLOTHING; ONLINE RETAIL STORE SERVICES FEATURING CHILDREN'S CLOTHING, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

**SERVICE MARK**

FIRST USE 7-31-2009; IN COMMERCE 7-31-2009.

**PRINCIPAL REGISTER**

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-813,260, FILED 8-26-2009.

HANNO RITTNER, EXAMINING ATTORNEY



*David J. Kyffers*

Director of the United States Patent and Trademark Office

# **EXHIBIT B**

Cape Kids  
made with love