

ESTTA Tracking number: **ESTTA587344**

Filing date: **02/14/2014**

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 | Barlow Designs, Inc. | | |
| Entity | Corporation | Citizenship | Rhode Island |
| Address | 20 Commercial Way East Providence, RI 02914 UNITED STATES | | |

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|----------------------|--|--|--|
| Attorney information | John L. Welch Lando & Anastasi, LLP One Main Street Eleventh Floor Cambridge, MA 02142 UNITED STATES jlwtrademarks@lalaw.com Phone:617-395-7000 | | |
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Registration Subject to Cancellation

| | | | |
|--------------------------------|--|---------------------------------|------------|
| Registration No | 3593654 | Registration date | 03/24/2009 |
| International Registration No. | NONE | International Registration Date | NONE |
| Registrant | Hao Chin, Allan T. 143 Maria Clara St., Talayan Village Quezon City, PHX 1101 PHX | | |

Goods/Services Subject to Cancellation

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| Class 025. First Use: 2003/06/16 First Use In Commerce: 2007/02/00 All goods and services in the class are cancelled, namely: Children's clothing, namely, dresses, blouses, pants, shorts, skirts, hats, caps, bandanas, headbands, shoes, shoes in the nature of sandals, panties, under shorts and briefs, shirts, polo shirts, shorts, and waterproof jackets |
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Grounds for Cancellation

| | |
|--------------------------------------|----------------------------|
| Abandonment | Trademark Act section 14 |
| Priority and likelihood of confusion | Trademark Act section 2(d) |

Mark Cited by Petitioner as Basis for Cancellation

| | | | |
|-----------------------------------|---|------------------|------|
| U.S. Application/Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | PERIWINKLE | | |
| Goods/Services | clothing items, including scarves and wraps | | |

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|-------------|--|
| Attachments | 3593654 Petition for Cancellation.pdf(127493 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 | /johnlwelch/ |
| Name | John L. Welch |
| Date | 02/14/2014 |

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

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|----------------------|---|----------------------------|
| _____ |) | |
| BARLOW DESIGNS, INC. |) | |
| |) | |
| Petitioner, |) | |
| |) | Cancellation No. |
| v. |) | |
| |) | |
| ALLAN T. HAO CHIN, |) | Registration No. 3,593,654 |
| |) | |
| Respondent. |) | |
| _____ |) | |

PETITION FOR CANCELLATION

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

Barlow Designs, Inc., a Rhode Island corporation having an address of 20 Commercial Way, East Providence, Rhode Island 02914 (hereinafter “Petitioner”), believes that it will be damaged by Registration No. 3,593,644 for the mark “periwinkle” (in standard character form) in International Classes 25, and hereby petitions to cancel said registration.

The grounds for this petition are as follows:

1. On March 24, 2009, the United States Patent and Trademark Office issued Trademark Registration No. 3,593,654 for the mark “periwinkle,” in standard character form, for “children’s clothing, namely, dresses, blouses, pants, shorts, skirts, hats, caps, bandanas,

headbands, shoes, shoes in the nature of sandals, panties, under shorts and briefs, shirts, polo shirts, shorts, and waterproof jackets,” in International Class 25. According to the records of the U.S. Patent and Trademark Office, Registration No. 3,593,654 is currently owned by Allan T. Hao Chin, a Philippine individual, 143 Maria Clara St., Talayan Village, Quezon City 1101, Philippines.

2. Petitioner is the owner of U.S. Trademark Mark Application Serial No. 86/018272 for the mark PERIWINKLE for “Footwear; Sandals; Sandals and beach shoes; Shoes” in International Class 25. Said application was filed on July 24, 2013, and is based upon Petitioner’s *bona fide* intent to use the mark in commerce.

3. On November 7, 2013, the U.S. Patent and Trademark Office issued an Official Action in said application, wherein Petitioner’s applied-for mark was refused registration under Section 2(d) of the Trademark Act on the ground of likelihood of confusion with the mark of Registration No. 3,593,654.

COUNT I - ABANDONMENT

4. Without conceding the propriety of said refusal under Section 2(d), Petitioner alleges, on information and belief, that Respondent has abandoned said registered mark “periwinkle” for the goods identified in Registration No. 3,593,654 by discontinuing use of said mark with regard to said goods with no intent to resume use.

5. Petitioner’s ability to use and register its mark PERIWINKLE in connection with

the promotion and sale of its products will be impaired by the continued registration of Respondent's mark.

COUNT II – LIKELIHOOD OF CONFUSION

6. Since long before Respondent's filing date and alleged date of first use, Petitioner has used its mark PERIWINKLE in connection with the marketing, sale, and distribution of clothing items, including scarves and wraps.

7. The goods set forth in Registration No. 3,593,654 are closely related to the goods in connection with which Petitioner has used and is using its mark PERIWINKLE, because Respondent's goods are identical or closely related to those of Petitioner and travel through the same channels of trade to the same classes of consumers.

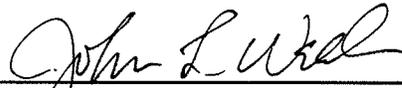
8. Moreover, the standard character mark "periwinkle" of Registration No. 3,593,654 is identical to Petitioner's mark PERIWINKLE, and is likely to cause confusion, mistake, and deception as to the source of Respondent's goods, all to Petitioner's damage. Customers and potential customers are likely to believe that Respondent's goods originate from, or are licensed or approved by, Petitioner, when that is not the case. Any dissatisfaction with the goods of Respondent will be attributed to Petitioner, all to Petitioner's damage.

9. Consequently, Petitioner's continued and lawful use of its mark PERIWINKLE in connection with its goods and services will be impaired by the continued registration of Respondent's mark.

* * * * *

WHEREFORE, Petitioner prays that Registration No. 3,593,654 be cancelled and that this Petition for Cancellation be sustained. The filing fee for this Petition in the amount of \$300.00 is enclosed.

BARLOW DESIGNS, INC.



John L. Welch
Lando & Anastasi, LLP
One Main Street, Eleventh Floor
Cambridge, MA 02142
617-395-7000

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon Respondent this 14th day of February, 2014, by mailing a copy thereof via first-class mail, postage pre-paid, to Allan T. Hao Chin, 143 Maria Clara St., Talayan Village, Quezon City 1101, Philippines.



John L. Welch