

ESTTA Tracking number: **ESTTA604637**

Filing date: **05/16/2014**

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	DQC International, Corp.		
Entity	Corporation	Citizenship	South Carolina
Address	13377 W. Hillsborough Ave., A-1 Tampa, FL 33635 UNITED STATES		

Correspondence information	Brittany J. Maxey Maxey Law Offices, PLLC 100 Second Avenue South, Suite 401N St. Petersburg, FL 33701 UNITED STATES b.maxey@maxeyiplaw.com, lpg@maxeyiplaw.com Phone:7272304949		
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**Registration Subject to Cancellation**

Registration No	4489696	Registration date	02/25/2014
Registrant	Dyrdek Enterprises, Inc. 777 S. Mission Rd Los Angeles, CA 90023 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 025. First Use: 2011/11/01 First Use In Commerce: 2011/11/01 All goods and services in the class are cancelled, namely: Apparel and clothing of all types for men women and children, namely, t-shirts,pants, shorts, woven shirts, jackets, hooded sweatshirts, sweat-shirts, jeans, coats, sweaters and caps/hats
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	The mark is not registrable on the Supplemental Register

**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application No.	85537902	Application Date	02/09/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MAKE YOUR OWN LUCK		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2011/07/01 First Use In Commerce: 2011/10/01 Fishing shirts

Attachments	85537902#TMSN.jpeg( bytes ) Petition_For_Cancellation_Registration_4489696.pdf(219307 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	/Brittany J. Maxey/
Name	Brittany J. Maxey
Date	05/16/2014

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

In the matter of Registration No. 4,489,696  
For the Trademark MAKE YOUR OWN LUCK  
Issued February 25, 2014

DQC International, Corp.,

Petitioner,

v.

Dyrdek Enterprises, Inc.,

Respondent.

Cancellation No.

**PETITION FOR CANCELLATION**

Petitioner DQC International, Corp. (“Petitioner”), believes that it is being or will be damaged by the continued registration in the United States Patent and Trademark Office (“USPTO”) of the MAKE YOUR OWN LUCK mark (“Respondent’s Mark”) shown in Registration No. 4,489,696 (the “Subject Registration”), owned by Dyrdek Enterprises, Inc. (“Respondent”) and which registered on February 25, 2014. Petitioner hereby petitions to cancel the Subject Registration under Section 24 of the Trademark Act of 1946, 15 U.S.C. § 1092.

As grounds for this Petition, Petitioner alleges that:

1. Petitioner is a South Carolina Corporation having an address of DCQ International, Corp., 13377 W. Hillsborough Ave., A-1, Tampa, FL 33635.
2. Petitioner is the owner of U.S. Trademark Application Serial No. 85/537,902 (“Asserted Application”) for the word mark MAKE YOUR OWN LUCK (“Petitioner’s Mark”).

3. The USPTO suspended the Asserted Application based on a likelihood of confusion with the Subject Registration.
4. Petitioner is being harmed or will be harmed by the Subject Registration remaining on Supplemental Register of the USPTO.
5. The Identification of Goods in the Asserted Application lists the goods of Fishing shirts in International Classification 025.
6. On information and belief, Respondent is a California Corporation, having its principal place of business at 777 S. Mission Rd., Los Angeles, CA 90023.
7. Respondent is the owner of the Subject Registration.
8. The Subject Registration is a word mark registered for the goods of: Apparel and clothing of all types for men women and children, namely, t-shirts, pants, shorts, woven shirts, jackets, hooded sweatshirts, sweatshirts, jeans, coats, sweaters and caps/hats (“Respondent’s Goods”); in International Classification 025.

**COUNT I**  
**NOT REGISTRABLE ON SUPPLEMENTAL REGISTER**

9. Petitioner hereby incorporates by reference and realleges each and every allegation set forth in Paragraphs 1 through 8.
10. The Subject Registration is based on Application Serial No. 85/298,273 (“Subject Application”).
11. The Subject Application was granted a Notice of Allowance on November 1, 2011.
12. The Subject Registration is registered on the Supplemental Register.
13. Respondent’s Mark is clearly eligible for the Principal Register.
14. The Subject Registration was refused registration on the Principal Register because the mark was not used in commerce.

15. Respondent's Mark as used on the Specimen of record for the Subject Registration was merely a decorative or ornamental feature of the Respondent's Goods.
16. Respondent's Mark as used on the Specimen of record for the Subject Registration does not function as a trademark to indicate the source of applicant's goods and to identify and distinguish them from others.
17. Respondent's Mark is inherently distinctive with respect to Respondent's Goods.
18. Respondent's Mark does not serve as an identifier of a secondary source.
19. Respondent's Mark as used on the Specimen of record is purely ornamental.
20. Respondent's Mark was not used in commerce before the Subject Application was amended to the Supplemental Register.
21. Respondent did not file an Amendment to Allege Use including a Specimen showing the mark used in commerce.
22. Respondent did not file an acceptable Amendment to Allege Use concurrently with the amendment seeking registration of the Subject Application on the Supplemental Register.

**COUNT II**  
**LIKELIHOOD OF CONFUSION**

23. Petitioner hereby incorporates by reference and realleges each and every allegation set forth in Paragraphs 1 through 22.
24. Respondent originally filed the Subject Application requesting registration on the Principal Register on April 19, 2011 claiming a Use in Commerce basis as provided by 15 U.S.C. 1051(a).
25. Respondent amended the Subject Application on May 26, 2011 to claim an Intent to Use basis as provided by 15 U.S.C. 1051(b).

26. Respondent filed an Amendment to Allege Use for the Subject Application on November 26, 2012.
27. The Amendment to Allege Use filed on November 26, 2012 by Respondent claimed a date of first use in commerce for Respondent's Mark of November 1, 2011.
28. The Amendment to Allege Use filed on November 26, 2012 by Respondent was refused by the USPTO because it did not show the mark used in commerce.
29. On June 19, 2013, Respondent filed a verified statement stating Respondent's Mark "has had a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application as of the filing date of the application."
30. Respondent attempted to amend the filing basis of the Subject Application to Intent to Use basis on June 19, 2013, thereby verifying that Respondent's Mark was not in use in commerce.
31. Respondent amended the Subject Application on December 20, 2013 to the claimed Use in Commerce basis seeking registration on the Supplemental Register.
32. Respondent did not file an acceptable Statement of Use concurrently with the amendment of the Subject Application to seek registration on the Supplemental Register.
33. Petitioner's Mark is currently in Use in Commerce.
34. Petitioner's Mark has been in Use in Commerce at least as early as October 1, 2011.
35. Respondent did not use Respondent's Mark in Commerce on or before October 1, 2011.
36. Respondent's Effective Filing Date of the Subject Application is after Petitioner's date of first use in commerce of Petitioner's Mark.
37. Respondent's claimed date of first use in commerce of Respondent's Mark is after Petitioner's date of first use in commerce of Petitioner's Mark.

38. Petitioner's Mark is identical to Respondent's Mark.

39. The Subject Registration and the Asserted Application both list goods registered in International Classification 025.

40. The Subject Registration and the Asserted Application both list goods which are clothing.

41. Respondent's use of Respondent's Mark for the goods listed in the Subject Registration is likely to cause consumer confusion as to the source or origin of goods.

WHEREFORE, Petitioner believes that it is being damaged or will be damaged by Registration No. 4,489,696 and prays that this Petition for Cancellation be sustained in favor of Petitioner, that judgment be entered against Respondent, and that U.S. Trademark Registration No. 4,489,696 be canceled.

Dated: May 16, 2014

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 16<sup>th</sup> day of May, 2014, a true and correct copy of the PETITION FOR CANCELLATION has been served in its entirety by First Class U.S. Mail to:

Geoffrey Taylor  
777 S. Mission Rd.  
Los Angeles, CA 90023

Dated: May 16, 2014



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