

ESTTA Tracking number: **ESTTA624259**

Filing date: **08/29/2014**

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	Kini Kai, L.L.C.		
Entity	limited liability company	Citizenship	Hawaii
Address	2929 Lapis Beach Dr. Las Vegas, NV 89117 UNITED STATES		

Attorney information	Mark Borghese Borghese Legal, Ltd. 10161 Park Run Drive, Suite 150 Las Vegas, NV 89145 UNITED STATES mark@borgheselegal.com, docket@borgheselegal.com Phone:(702) 382-0200		
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Registration Subject to Cancellation

Registration No	4149388	Registration date	05/29/2012
Registrant	Taryn Rodighiero 6250 Olohena Rd Kapaa, HI 96746 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2010/10/15 First Use In Commerce: 2010/12/01 All goods and services in the class are cancelled, namely: Bottoms; Clothing, namely, wrap-arounds; Headbands for clothing; Hoods; Infant and toddler one piece clothing; Infant cloth diapers; Jackets; Jerseys; Shoulderwraps; Shoulder wraps for clothing; Sunprotective clothing, namely, swimwear, board shorts, rash guards; Swimwear; Tops; Triathlon clothing, namely, triathlontights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; Wearable garments and clothing, namely, shirts; Women's clothing, namely, shirts, dresses, skirts, blouses; Wraps
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Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86375743	Application Date	08/25/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	KINI KAI		

Design Mark	<h1>Kini Kai</h1>
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2010/03/15 First Use In Commerce: 2010/03/15 Shirts; Swimwear

Attachments	86375743#TMSN.png(bytes) 2014-08-29-Petition to Cancel.pdf(22081 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	/MB/
Name	Mark Borghese
Date	08/29/2014

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

In the Matter of Trademark Registration No.: 4,149,388

Mark: KaiKini

Date of Registration: May 29, 2012

Kini Kai, L.L.C.,)	
)	
)	
Petitioner,)	Cancellation No: _____
)	
vs.)	
)	
Taryn Rodighiero, DBA KaiKini)	
)	
Registrant.)	
_____)	

PETITION TO CANCEL

Petitioner, Kini Kai, L.L.C., a Hawaii limited liability company, believes that it will be damaged by the continued registration of the mark KaiKini, Registration No. 4,149,388, and hereby petitions to cancel the same pursuant to Section 14 of the Lanham Act, 15 U.S.C. §1064. As grounds for cancellation, Petitioner asserts that:

1. Kini Kai, L.L.C. (“Petitioner”) is a Hawaii limited liability company which sells apparel, including swimwear and shirts, nationwide under the brand name Kini Kai.
2. Upon information and belief, Taryn Rodighiero DBA KaiKini (“Registrant”) is a Hawaii sole proprietorship composed of Taryn Rodighiero, a citizen of the United States, with an address of 6250 Olohena Rd. Kapaa, Hawaii 96746.
3. Petitioner has been selling apparel under the Kini Kai brand in U.S. commerce since

at least as early as March 15, 2010. Petitioner has invested a great deal of time and money in promoting Petitioner's business, and is continuing to spend substantial amounts of time and money in the promotion of the same.

4. On August 25, 2014, Petitioner filed Application Serial No. 86/375743 for the registration of Kini Kai on the Principal Register for, "Shirts; Swimwear" in Class 25 ("Kini Kai Mark."

5. On September 11, 2011, Registrant filed Application Serial No. 85/419812 for registration of KaiKini on the Principal Register for, "Bottoms; Clothing, namely, wrap-arounds; Headbands for clothing; Hoods; Infant and toddler one piece clothing; Infant cloth diapers; Jackets; Jerseys; Shoulder wraps; Shoulder wraps for clothing; Sun protective clothing, namely, swimwear, board shorts, rash guards; Swimwear; Tops; Triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; Wearable garments and clothing, namely, shirts; Women's clothing, namely, shirts, dresses, skirts, blouses; Wraps" in Class 25. This application matured into Registration No. 4,149,388 on May 29, 2012 for the same goods and is the subject of this petition ("KaiKini Mark").

Fraud

6. On September 11, 2011, Registrant submitted a sworn declaration to the PTO in connection with Application Serial No. 85/419812 in which she declared under oath, being warned that willful false statements, and the like, may jeopardize the validity of the application, that "[t]he Registrant is using the mark in commerce, or the Registrant's related company or licensee is using the mark in commerce, or the Registrant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services." Registrant further declared that the

dates of first use in commerce was at least as early as December 1, 2010.

7. Upon information and belief, Registrant was not using the mark KaiKini on or in connection with all the goods listed in Reg. No. 4,149,388 when she filed the application on September 11, 2011 and, upon information and belief, is not currently using the mark in connection with all the goods identified in the application.

8. Upon information and belief, the declaration alleging use of the KaiKini mark in Application No. 85/419812 was made in bad faith and in an attempt to perpetrate a fraud upon the PTO because Registrant knew or should have known that she was not using the mark KaiKini in connection with all the goods identified in the application.

9. Reasonably relying on the truth of such materially false statement, the PTO approved Application No. 85/419812 for registration, resulting in Registration No. 4,149,388 issuing on May 29, 2012.

10. Upon information and belief, the conduct of Registrant constitutes fraud on the PTO and therefore Registration No. 4,149,388 should be cancelled pursuant to Section 14(3) of the Lanham Act, 15 U.S. Code § 1064.

Likelihood of Confusion

11. Petitioner began using its Kini Kai mark at least as early as March 15, 2010 and has strong nationwide common law rights beginning at least as early as that date.

12. Registrant's KaiKini Mark is highly similar in sight, sound, appearance, and commercial impression to Petitioner's Kini Kai Mark.

13. Petitioner will be damaged by continued registration of Registrant's KaiKini Mark, because the mark so resembles Petitioner's Kini Kai Mark as to be likely to cause confusion,

mistake, and/or deception, particularly because the parties' goods are identical or nearly identical.

14. Persons familiar with Petitioner's Kini Kai Mark and the goods offered by Petitioner under its Kini Kai Mark would be likely to believe erroneously that Registrant's goods are the goods of Petitioner or are authorized, endorsed, sponsored, or licensed by Petitioner.

15. Thus, continued registration of Registrant's Mark on the Principal Register would be inconsistent with Petitioner's prior rights in its Kini Kai Mark and in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, for the reasons set forth above, Petitioner requests that Registration No. 4,149,388 be cancelled.

Respectfully submitted,

Dated: August 29, 2014

By: 

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Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **PETITION TO CANCEL** has been served on the Registrant, by mailing said copy on August 29, 2014, via First Class Mail, postage prepaid, to the Registrant's address of record:

Taryn Rodighiero DBA KaiKini
6250 Olohena Rd
Kapaa, Hawaii 96746



Mark Borghese