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

Proceeding	92059866
Party	Plaintiff Kini Kai, L.L.C.
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Attachments	2015-05-01-Motion for Summary Judgment.pdf(143095 bytes) 2015-05-01-Exhibit List.pdf(77816 bytes) EXHIBIT 1 - Meadors Declaration.pdf(154984 bytes) EXHIBIT 2 - Archive.org.pdf(1423008 bytes) EXHIBIT 3 - Sales.pdf(664481 bytes) EXHIBIT 4 - Labels and Packaging.pdf(312801 bytes) EXHIBIT 5 - File Wrapper.pdf(1207011 bytes) EXHIBIT 6 - Response to Admissions.pdf(245944 bytes) EXHIBIT 7 - Response to Interrogatories.pdf(239400 bytes) EXHIBIT 8 - Office Action.pdf(179989 bytes) EXHIBIT 9 - Cancellation.pdf(39981 bytes) EXHIBIT 10 - Answer.pdf(42271 bytes) EXHIBIT 11 - Marketplace Confusion.pdf(491758 bytes)

**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: 92059866
)	
vs.)	
)	
Taryn Rodighiero, DBA KaiKini)	
)	
Registrant.)	
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**PETITIONER’S MOTION FOR SUMMARY JUDGMENT
AND REQUEST TO SUSPEND PROCEEDINGS**

Petitioner, Kini Kai, L.L.C., a Hawaii limited liability company (“Petitioner”) moves pursuant to Fed. R. Civ. P. 56 and Rule 2.127(b) of the Trademark Rules of Practice for summary judgment canceling the registration of the mark KaiKini, Registration No. 4,149,388 (the “KaiKini Mark”).

Petitioner also requests that, pursuant to Rule 2.127(d), 37 C.F.R. § 2.127(d), the Board suspend this proceeding pending determination of this Motion for Summary Judgment.

The facts and grounds for Petitioner’s Motion for Summary Judgment are set forth in the Memorandum of Law in Support of Motion for Summary Judgment submitted herein. This Motion is also based on the undisputed facts within the declaration and exhibits attached hereto.

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MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Petitioner, seeks summary judgment cancelling the KaiKini Mark. This matter is ripe for resolution on summary judgment because (i) The KaiKini Mark is *void ab initio* as Registrant admits in responses to requests for admission that she has never used the KaiKini Mark in commerce on numerous goods identified in the Registration; and (ii) Petitioner has used its Kini Kai mark in commerce prior to Registrant's date of first use and the KaiKini Mark and Petitioner's Kini Kai mark will easily be confused.

I. STATEMENT OF FACTS

A. Background of Petitioner and Registrant

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 ("Kini Kai Mark") (*See* Exhibit 1, Declaration of Jennifer K. Meadors at ¶ 4). Petitioner and its predecessor in interest, Kini Kai Swimwear L.L.C. have been selling apparel under the Kini Kai brand in U.S. commerce since March 2009. (Meadors Decl. at ¶ 6). Attached as **Exhibit 2** is a true and correct copy of Archive.org's capture of several pages Petitioner's KiniKaiSwimwear.com site on various dates in 2009 and 2010. As can be seen in the screenshots, Petitioner is offering various swimwear tops and bottoms for sale on that date using the brand name Kini Kai. Attached as **Exhibit 3** are true and correct copies of exemplar sales invoices and data from 2009, 2010, and 2011 (Meadors Decl. at ¶ 9). From March 2009 until September 11, 2011 when Registrant's application was filed, Petitioner had already sold more than four hundred swimwear products (*Id.*). Attached as **Exhibit 4** are true and correct copies of photographs showing how the Kini Kai Mark was used on products, promotions, and packaging in various years, including in 2009 and 2010 (Meadors Decl. at ¶ 10).

Petitioner has spent thousands of dollars promoting its Kini Kai products throughout the

United States (Meadors Decl. at ¶ 12). Petitioner, and its predecessor in interest, have consistently sold swimwear to United States customers since early 2009 (Meadors Decl. at ¶ 6-13).

Upon information and belief, Taryn Rodighiero DBA KaiKini (“Registrant”) is a Hawaii sole proprietorship composed of Taryn Rodighiero, a citizen of the United States (See **Exhibit 5**). Registrant copied the branding of Petitioner, simply reversing the Kini Kai Mark into the KaiKini Mark (Meadors Decl. at ¶ 15). Registrant claims a date of first use in commerce of December 1, 2010 in her application filed September 11, 2011 (See **Exhibit 5**).

B. Registrant’s Fraud

On September 11, 2011, Registrant electronically filed her application for the KaiKini Mark based solely on Section 1(a) of the Trademark Act (See **Exhibit 5**). Registrant submitted a sworn declaration to the PTO in connection her application for the KaiKini Mark 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.” In the Application, Registrant claimed the KaiKini Mark was in use in commerce with the following goods:

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

(*Id.*).

In Registrant’s responses to Petitioner’s requests for admission, however, Registrant admitted that on or before the application filing date, September 11, 2011, she had not sold any of

the following goods under the KaiKini Mark: wrap-arounds, headbands, hoods, infant and toddler one piece clothing, infant cloth diapers, jackets, jerseys, shoulder wraps, board shorts, rash guards, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, shirts, dresses, skirts, and blouses. (See **Exhibit 6**, responses 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 25, 27, 29, 31, and 33).

In fact in Registrant's responses to the requests for admission Registrant admitted that she has never sold any of the following goods under the KaiKini Mark at any time: wrap-arounds, headbands, hoods, infant cloth diapers, jackets, jerseys, board shorts, rash guards, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, dresses, skirts, and blouses (See **Exhibit 6**, responses 4, 6, 8, 12, 14, 16, 20, 22, 26, 28, 30, and 32).

Falsely claiming the KaiKini mark had been used in interstate commerce on numerous goods is a material misrepresentation of fact that Registrant knew, or should have known, was false or misleading. When asked in an interrogatory question why she claimed that declaration alleging use of the KaiKini Mark was not made in bad faith and in an attempt to perpetrate fraud upon the United States Patent and Trademark Office, Registrant responded that she was ignorant of the rules of the trademark office. Registrant stated:

Registrant was completely unaware that her mark had to be in use in connection with all of the products listed in the application. She believed that her mark only had to be in use in connection with at least one of the products listed in the application. As such, she also included products with which she legitimately intended to use her mark as her business continued to grow and expand.

(See **Exhibit 7**, Response 2).

II. ARGUMENT

The undisputed facts of this case are that as of Registrant's filing date of the application for the KaiKini Mark, Registrant was not using the mark in U.S. commerce in connection with the following goods: wrap-arounds, headbands, hoods, infant cloth diapers, jackets, jerseys, board shorts, rash guards, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, dresses,

skirts, and blouses (*See Exhibit 6*, responses 4, 6, 8, 12, 14, 16, 20, 22, 26, 28, 30, and 32). Thus Registrant has committed fraud in registering the KaiKini Mark and the registration certificate which issued is *void ab initio*. In addition, Petitioner has superior rights to its Kini Kai Mark based on its first use of the mark in commerce almost two years prior to Registrant's claimed first use date of December 1, 2010. Moreover, because the dominant features of the marks, namely the words Kini Kai and the words KaiKini are identical and cover identical products, Registrant's KaiKini Mark creates a likelihood of confusion with Petitioner's Kini Kai Mark. Accordingly, Petitioner requests that the Board grant its motion for summary judgment.

A. The Summary Judgment Standard

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585-87 (1996). The opposing party's mere allegation of factual issues will not defeat a properly supported motion for summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986); *BellSouth Telecomms., Inc. v. W.R. Grace & Co.*, 77 F.3d 603, 615 (2d Cir. 1996). Rather, to create a material issue for trial, there must be sufficient evidence in the record to support a verdict in the non-moving party's favor. *Tullo v. City of Mt. Vernon*, 237 F. Supp. 2d 493 (S.D.N.Y. 2002).

Summary judgment is appropriate here because there is no genuine issue as to any material fact concerning the lack of Petitioner's use in commerce of the KaiKini mark for all of the goods identified in the KaiKini application and the KaiKini registration. In addition, Petitioner's prior rights to the Kini Kai Mark and the likelihood of confusion between the Kini Kai Mark and the KaiKini Mark marks. Fed. R. Civ. P. 56; *Celotex Corp. v. Cartrett*, 477 U.S.

317 (1986); *BellSouth Corp. v. DataNational Corp.*, 60 F.3d 1565, 1569 (Fed. Cir. 1995); *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 223 U.S.P.Q 909, 911 (T.T.A.B. 1984). As a result, the Board should rule as a matter of law that the KaiKini Mark registration, Registration No. 4,149,388 should be cancelled.

The purpose of summary judgment is to avoid unnecessary trials and to save the time and expense of litigation where there is no genuine issue of material fact that exists and where no evidence beyond the evidence submitted with respect to the summary judgment motion could reasonably change the outcome. *Pure Gold v. Syntax (U.S.A.) Inc.*, 739 F.2d 624, 222 U.S.P.Q 741, 743 (Fed. Cir. 1984); *Nature's Way Prods., Inc. v. Nature's Herbs, Inc.*, 9 U.S.P.Q.2d 2077, 2080 (T.T.A.B. 1989).

Here, the declaration, discovery responses, and evidence submitted in this action provide abundant support for Petitioner's claim that Registrant committed fraud and Petitioner's priority as a matter of law. Indeed, Registrant has admitted to her fraud in her responses to the requests for admission.

Registrant's KaiKini application, along with her discovery responses, clearly and irrefutably establish that the KaiKini mark should be cancelled. Registrant cannot sustain its burden of showing any genuine factual issue, and summary judgment should be granted in favor of Petitioner with respect to priority and the likelihood of confusion. *See Celotex Corp. v. Cartrett*, 477 U.S. 317, 325 (1986) (holding that the movant may carry its burden by demonstrating the absence of evidence to support the non-movant's claims).

B. Petitioner has Standing

Standing to file an cancellation proceeding exists for by "any person who believes that he is or will be damaged, including as a result of dilution under section 43(c) [15 USC 1125(c)], by the registration of a mark on the principal register . . ." 15 U.S.C. § 1064. Petitioner has standing

to cancel Registrant's KaiKini Mark because Petitioner has been and will continue to be precluded from registering the Kini Kai Mark as a result of Registrant's application as reflected in the attached Office Action (*See Exhibit 8*)

Petitioner, and Petitioner's predecessor in interest have been selling goods bearing the Kini Kai Mark in the United States since early 2009 and have spent thousands of dollars promoting the Kini Kai brand in the United States (Meadors Decl., at ¶¶ 6-13). Because the dominant features of the marks are identical and the goods are highly related, if not identical, Petitioner's application will be refused unless the registration for the KaiKini mark is canceled. For these reasons, Petitioner clearly has standing.

C. Registrant Committed Fraud

Based on the undisputed facts of this case, the KaiKini mark should be cancelled as Registrant committed fraud in procuring the KaiKini mark.

Fraud in procuring a trademark registration occurs when an applicant for registration knowingly makes false, material representations of fact in connection with an application to register. *See Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir., 1986). A party making a fraud claim is under a heavy burden because fraud must be proved by clear and convincing evidence, leaving nothing to speculation, conjecture, or surmise. Any doubt must be resolved against the party making the claim. *See Smith International, Inc. v. Olin Corporation*, 209 USPQ 1033 (TTAB 1981).

Hurley International LLC v. Volta, 82 USPQ2d 1339 (TTAB 2007).

Here there is no genuine issue of material fact that Registrant filed an application for the KaiKini Mark based on use in commerce and electronically signed a declaration attesting to the truth of all the statements in the application. There is also no genuine issue of material fact that Registrant knew or should have known that she did not use the mark in connection with all of the recited goods she listed in the application.

Statements regarding the use of the mark on goods and services are certainly material to issuance of a registration. *See Standard Knitting, Ltd. v. Toyota Jidosha*

Kabushiki Kaisha, 77 USPQ2d 1917 (TTAB 2006)(fraud found based on misrepresentation regarding use of the mark on most of the goods identified in the filed applications); *First International Services Corp. v. Chuckles Inc.*, 5 USPQ2d 1628 (TTAB 1988) (fraud found in applicant’s filing of application with verified statement that the mark was in use on a range of personal care products when applicant knew it was in use only on shampoo and hair setting lotion).

Id. The facts in this case are almost identical to those in both *Hurley* and *Medinol Ltd. v. Neuro VASX Inc.*, 67 USPQ2d 1205 (TTAB 2003). In *Hurley*, an application was filed based on use in commerce for various services. The Applicants in *Hurley*, had not used the mark for all of the services they filed for at the time the application was filed. The Board found that filing a use based application when not all of the identified services had been used in commerce was fraud and sustained the opposition against the mark.

In *Medinol*, a registration was granted for the mark NEUROVASX for “medical devices, namely, neurological stents and catheters.” During the proceedings the registrant of NEUROVASX admitted that the mark had never been used on stents. The registrant of NEUROVASX attempted to amend the registration and delete stents from the registration. The Board denied the requested amendment and *sua sponte* entered summary judgment in favor of the petitioner finding that the registrant of NEUROVASX committed fraud in procurement of the NEUROVASX registration. The Board held,

Respondent’s knowledge that its mark was not in use on stents - or its reckless disregard for the truth - is all that is required to establish intent to commit fraud in the procurement of a registration.

Id.

Hurley, *Medinol*, and the present case, are all related to the same issue: false statements alleging use in commerce of the relevant mark in connection with all of the goods and services listed in the relevant application. In all three cases, the owner of the challenged mark admitted that the relevant mark has never been in use with one or more of the listed goods and services.

Here Registrant admits that she has never used the KaiKini Mark in connection with most of the goods listed on the registration certificate. Specifically Registrant has never used the KaiKini mark in connection with wrap-arounds, headbands, hoods, infant cloth diapers, jackets, jerseys, board shorts, rash guards, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, dresses, skirts, and blouses (See **Exhibit 6**, responses 4, 6, 8, 12, 14, 16, 20, 22, 26, 28, 30, and 32).

In both *Hurley* and the present case, the applicants of the relevant marks submitted false statements as to the use of their marks in commerce at the time of filing the application. Moreover, in all three cases, a material misrepresentation of fact with regard to the use of the mark on particular goods or services was made by the owner of the mark and that statement was relied upon by the United States Patent and Trademark Office in determining the applicant's rights to the registration. In this case, as in both *Hurley* and *Medinol*, the material misrepresentation of fact was made in a declaration signed by the owner of the mark and submitted to the PTO.

Similar to both *Hurley* and *Medinol*, the intent element of fraud has been clearly met in this case. As explained in *Hurley*,

The fact that applicants allegedly misunderstood a clear and unambiguous requirement for an application based on use, were not represented by legal counsel, and were suffering health problems does not change our finding of fraud herein. It is well established that in inter partes proceedings “proof of specific intent is not required, rather, fraud occurs when an applicant or registrant makes a false material representation that the applicant or registrant knew or should have known was false.” *General Car and Truck*, 17 USPQ2d at 1400-1401 (intent of the signatories not material to question of fraud).

As the Board determined in *Medinol*, supra at 1209, “the appropriate inquiry is...not into the registrant's subjective intent, but rather into the objective manifestations of that intent.”

See Hurley, supra.

In this case, Registrant has admitted that she was not using (and has never used) the KaiKini Mark on numerous goods listed in the registration certificate for the KaiKini Mark.

E. Petitioner Has Priority Over Registrant's Mark

In addition to the fact that the KaiKini Mark should be cancelled due to fraud, Petitioner's Kini Kai Mark also has priority over Registrant's KaiKini Mark. Priority can be established by first use of a mark in commerce or by filing a trademark application first. Lanham Trademark Act § 2(d), 15 U.S.C. § 1052(d). Thus, a petitioner can establish prior trademark rights by relying on common law or registered trademark rights.

Common law rights are established by use of the mark in commerce. *U.S. v. Steffens*, 100 U.S. 82, 92 (1879). The “opposer must prove by preponderance of the evidence that its common law rights were acquired before any date upon which registrant may rely.” *Embarcadero Techs. v. RStudio, Inc.*, 105 U.S.P.Q.2d 1825, 1834 (T.T.A.B. 2013) (citing Trademark Act Section 2, 15 U.S.C. § 1052; *Hydro-Dynamics Inc. v. George Putnam & Company Inc.*, 811 F.2d 1470, 1 U.S.P.Q.2d 1772, 1773 (Fed. Cir. 1987)). Petitioner's Kini Kai Mark has priority over Registrant's mark because Petitioner first used its Kini Kai Mark in commerce almost two years prior to Registrant's claimed date of first use in commerce of December 1, 2010.

As demonstrated in Exhibits 1, 2, 3, 4, and 5 Petitioner's first use in commerce date clearly predates Registrant's priority date. Therefore, Petitioner has priority over Registrant's as a matter of law. There are no genuine issues of material facts regarding Petitioner's priority, thus, Petitioner is entitled to judgment as a matter of law on priority.

D. The Kini Kai Mark and the KaiKini Mark are Likely to be Confused

A review of the most relevant *DuPont* factors traditionally analyzed by the Board in trademark opposition proceedings readily leads to the conclusion that Registrant's KaiKini Mark for various clothing, including swimwear, in Class 25 is likely to cause confusion with

Petitioner's Kini Kai Mark in the market place under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d). *In re E.I. DuPont de Nemours & Co.* 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In analyzing whether a mark creates a likelihood of confusion, the following factors are considered: "the fame of [the] mark; the similarity of the goods, the channels of trade and purchasers; the conditions of sale; the similarity of the marks; and [registrant's] intent." *Midwestern Pet Foods, Inc. v. Societe Des Produits Nestle S.A.*, 685 F.3d 1046, 1052 (Fed. Cir. 2012) (citing *In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973)). "[N]ot all the factors are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record." *Embarcadero Techs. v. RStudio, Inc.*, 105 U.S.P.Q.2d 1825, 1835 (T.T.A.B. 2013) (citing *Citigroup Inc. v. Capitol City Bank Grp.*, 637 F.3d 1344, 98 U.S.P.Q.2d 1253, 1260 (Fed. Cir. 2011)). However, two considerations are key in the likelihood of confusion analysis: (1) the similarities between the marks and (2) the similarities between the goods and/or services. *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997).

1. Similarity of the Marks

First, in addressing the similarity or dissimilarity of the marks, the marks are "viewed in their entirety in terms of appearance, sound, connotation and commercial impression." *Embarcadero Techs. v. RStudio, Inc.*, 105 U.S.P.Q.2d 1825, 1835 (T.T.A.B. 2013) (citing *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 U.S.P.Q.2d 1689 (Fed. Cir. 2005)).

In the present opposition proceeding, the respective marks of the parties, Kini Kai and KaiKini, are highly similar in sound, appearance, connotation and commercial impression in the context of clothing in Class 25. Registrant merely reversed the order of the words in Registrant's mark from Kini Kai to KaiKini. Thus, Petitioner and Registrant have virtually identical trademarks. Accordingly, this factor weighs in favor of Petitioner.

2. Similarity of the Goods

Second, in comparing the goods and services, “we consider whether ‘the respective products are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.’” *Embarcadero Techs. v. RStudio, Inc.*, 105 U.S.P.Q.2d 1825, 1837 (T.T.A.B. 2013) (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 U.S.P.Q.2d 1713, 1722 (Fed. Cir. 2012)).

For the determination of this prong of the likelihood of confusion analysis, it must be “confined to the identification of goods set forth in the applications and pleaded registration, in addition to any prior common law rights established by petitioner.” *Embarcadero Techs. v. RStudio, Inc.*, 105 U.S.P.Q.2d 1825, 1830 (T.T.A.B. 2013) (citing *J & J Snack Foods Corp. v. McDonald’s Corp.*, 932 F.2d 1460 (Fed. Cir. 1991)). Here, both marks are for the same or highly related goods—clothing, primarily swimwear, in Class 25. Petitioner has common law rights in the United States using the mark Kini Kai for swimwear predating Registrant’s claimed first use of her mark (Meadors Decl., at ¶¶ 6-13). Registrant admits that she has not used the KaiKini mark on the other goods in her Registration other than on swimwear and one or two other items (*See Exhibit 6*). Given these similarities between the parties’ respective marks and goods, a strong likelihood of confusion exists. Accordingly, this factor weighs in favor of Petitioner.

3. Similarity of Marketing Channels Used

In instances where the parties have not set restrictions on channels of trade in their applications and/or registrations, “goods and services are presumed to travel in the same channels of trade to the same class of purchasers.” *Hewlett Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268 (Fed. Cir. 2002). The Board should assume that use of the mark will include “all normal and usual channels of trade and methods of distribution” for the types of products at issue.

Squirtco v. Tomy Corp., 697 F.2d 1038, 1042–43 (Fed. Cir. 1983). In particular, where the products are closely related or overlap, the Board should assume that they would be sold in the same channels of trade to the same ordinary consumers. *See Venture Out Props. LLC v. Wynn Resorts Holdings LLC*, 81 USPQ2d 1887, 1894 (TTAB 2007) (“Because the services are clearly related, they would be offered in the same channels of trade and offered to the same classes of consumers”); *see also Interstate Brands Corp. v. McKee Foods Corp.*, 53 USPQ2d 1910, 1913 (TTAB 2000) (“Because the goods are legally identical, they must also be deemed to be sold in the same channels of trade to the same classes of customers.”). In addition, in light of the fact that both parties use or intend to use the KaiKini Mark and Kini Kai Mark on the same types of goods, the Board should assume that the parties’ products will be sold in the same channels of trade to the same types of consumers. Accordingly, this factor weighs in Petitioner’s favor.

4. Evidence of Actual Confusion

It is well settled that Petitioner need not show actual confusion to establish that there is a likelihood of confusion. *Herbko International, supra, Weiss Assocs., Inc. v. HRL Assocs. Inc.*, 902 F.2d 1546, 1549, 14 USPQ2d 1840, 1842-1843 (Fed. Cir. 1990). Nonetheless, there is evidence of actual confusion in this case (*See Meadors Decl.*, at ¶ 17; *See also Exhibit 11*).

In view of the above, there are no genuine issues of material facts regarding the similarity of the parties’ marks or the products offered under these marks or the other likelihood of confusion factors, thus, Petitioner is entitled to judgment as a matter of law regarding a likelihood of confusion between the marks.

IV. CONCLUSION

For all of the foregoing reasons, Petitioner has established that there are no genuine issues of material fact regarding the standing of Petitioner, Registrant’s fraud, Petitioner’s priority over Registrant’s mark, or a likelihood of confusion between the Kini Kai Mark and the KaiKini Mark.

Consequently, Petitioner respectfully requests that the Board grant its motion for summary judgment and cancel the registration of KaiKini Registration No. 4,149,388.

Respectfully submitted,

Dated: May 1, 2015

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND REQUEST TO SUSPEND PROCEEDINGS** has been served on the attorney of record for the Registrant, who has consented to service by email, by emailing said copy and providing links to download any attachments too large to email on May 1, 2015 to the attorney's email addresses of record:

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Mark Borghese

**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.,)	
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**EXHIBIT LIST TO MEMORANDUM OF LAW IN SUPPORT
OF PETITIONER’S MOTION FOR SUMMARY JUDGMENT**

Exhibit	Description
1	Declaration of Jennifer K. Meadors
2	Archive.org’s capture of KiniKaiSwimwear.com
3	Sales Invoices and Summaries from 2009, 2010, and 2011
4	Labels and Packaging for the Kini Kai brand
5	File Wrapper for Registrant’s KaiKini Application
6	Registrant’s Responses to Petitioner’s First Requests for Admission
7	Registrant’s Responses to Petitioner’s First set of Interrogatories
8	Office Action dated December 19, 2014 initially refusing Petitioner’s mark
9	Petitioner’s Cancellation
10	Registrant’s Answer
11	Examples of Marketplace Confusion

EXHIBIT 1

EXHIBIT 1

petitioner, kinikaiswimwear.com. In March 2010 operations were transferred to Petitioner.

6. Starting in or about March 2009, Petitioner's predecessor in interest, Kini Kai Swimwear L.L.C, began selling Kini Kai branded all over the United States. Attached as **Exhibit 2** is a true and correct copy of Archive.org's capture of several pages Petitioner's KiniKaiSwimwear.com from 2009 and 2010. As can be seen in the screenshots, Petitioner is offering various swimwear tops and bottoms for sale throughout this time period.

7. When Petitioner was formed in March 2010, all of the assets of Petitioner's predecessor in interest, including all worldwide right title and interest in the mark Kini Kai, as well as the website kinikaiswimwear.com were transferred to Petitioner.

8. Since forming Petitioner, all operations of the business, including, sales, marketing, and all use of the trademark Kini Kai have been conducted by Petitioner, Kini Kai, L.L.C.

9. Attached as **Exhibit 3** are true and correct copies of some early invoices and sales data evidencing sales of Kini Kai brand swimwear in the United States in 2009, 2010, and 2011. From March 2009 until September 11, 2011 when Registrant's application was filed, Petitioner had already sold more than four hundred swimwear products.

10. Attached as **Exhibit 4** are true and correct copies of packaging and tags which were attached to product and packaging of Kini Kai swimsuits as they would have been sold and shipped in interstate commerce by Petitioner and Petitioner's predecessor in interest in various years including 2009 and 2010.

11. In addition to Petitioner's website, Petitioner and Petitioner's predecessor in interest have promoted the Kini Kai brand through sales on Amazon.com, Ebay.com, and Etsy.com. In addition, Petitioner and Petitioner's predecessor in interest have promoted the Kini Kai brand at surf shops throughout the United States, in tanning salons, in clothing boutiques, and

in fitness clothing boutiques.

12. Since 2009, Petitioner and its predecessor in interest have spent thousands of dollars promoting Kini Kai brand products to United States customers.

13. In addition, the Kini Kai brand has appeared on various printed and electronic publications including Charleston Art Magazine, Skirt Magazine Charleston, San Antonio Magazine, Foam Magazine.com, www.sugarspiceswimwear.com, Jetty Girl Magazine.com, YouTube, Facebook, and Instagram.

14. Upon information and belief, Registrant Taryn Rodighiero DBA KaiKini is a Hawaii sole proprietorship composed of Taryn Rodighiero, a citizen of the United States.

15. Registrant copied the branding of Petitioner, simply reversing the Kini Kai Mark into the KaiKin Mark. Registrant even copied Petitioner's original color scheme.

16. Petitioner's Kini Kai mark, and the Registrant's KaiKini Mark are practically identical and easily confused. In addition, the goods sold under Petitioner's Kini Kai mark are identical or nearly identical to the goods Registrant sells under the KaiKi Mark.

17. There has also been ample recent consumer confusion with consumers believing that Registrant's goods are related to Petitioner. For example, Petitioner routinely receives text, emails, and calls from customers mistaking Petitioner's website for Registrant's and asking why their coupon code does not work or why they are unable to access their account. In addition, on Pinterest and Ployvore (a site where users resell fashion items) photographs of Petitioner's bikinis are routinely being tagged as Registrant's bikinis. Attached as **Exhibit 11** are true and correct copies of screenshots of bikinis incorrectly tagged by users of various websites.

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///

18. Attached as **Exhibit 5** is a true and correct copy of the file wrapper for Registrant's KaiKini Application.

19. Attached as **Exhibit 6** is a true and correct copy of Registrant's Responses to Petitioner's First Requests for Admission.

20. Attached as **Exhibit 7** is a true and correct copy of portions of Registrant's Responses to Petitioner's First set of Interrogatories.

21. Attached as **Exhibit 8** is a true and correct copy of the Office Action dated December 19, 2014 initially refusing Petitioner's Kini Kai mark based on a likelihood of confusion with Registrant's KaiKini mark.

22. Attached as **Exhibit 9** is a true and correct copy of Petitioner's Cancellation filed in this action.

23. Attached as **Exhibit 10** is a true and correct copy of Registrant's Answer filed in this action.

24. When I state herein that copies of Exhibits are "attached" I mean that I understand that a pdf copy of this declaration and pdf copies of these exhibits are being electronically filed on the same date in the USPTO in connection with the above captioned Cancellation No. 92059866.

25. As set out herein, due to the likelihood of confusion between Petitioner's Kini Kai mark and KaiKini Mark, Petitioner will be damaged should KaiKini Mark not be cancelled.

///

///

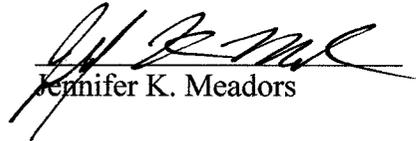
///

///

///

///

26. The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.


Jennifer K. Meadors

Dated: 4/30/15

EXHIBIT 2

EXHIBIT 2

- [Home](#)
- [Shop](#)
- [Shopping cart](#)
- [About Us](#)
- [Contact Form](#)
- [Newsletter](#)
- [Customer login](#)
- [Search](#)

String Bikinis

We are so confident that you will love your Kini Kai Bikini, we offer a Money Back Guarantee

Mix and Match

Double Stitched

Great Fit

Spice up a top or bottom you already have with one of our individual pieces

Subscribe for Newsletters & Receive 20% OFF Your First Order

Customize Your Style by Mix & Matching Colors & Sizes

Secure Checkout Provided by PayPal

- [Home](#)
- [Shop](#)
- [Shopping cart](#)
- [About Us](#)
- [Contact Form](#)
- [Newsletter](#)
- [Customer login](#)
- [Search](#)
- [Bikini Contest](#)

Item overview

My catalog

[Bottoms](#)

Add a solid bottom to any suit.

New

[Black String Bikini](#)

Black Triangle Top Black String Bottom

Item number 1 USD 59.90

[Detailed view](#) [Plus shipping and handling](#)

[Plus sales tax](#)

[Detailed view](#)

[Tops](#)

Spice up your suit with a Kini Kai top

New

[Blue String Bikini](#)

Blue Triangle Top Blue String Bottom

Item number 3 USD 59.90

[Detailed view](#) [Plus shipping and handling](#)

[Plus sales tax](#)

[Detailed view](#)

New

[Brown String Bikini](#)

Brown Triangle Top Brown String Bottom

Item number 2 USD 59.90

[Detailed view](#) [Plus shipping and handling](#)

[Plus sales tax](#)

[Detailed view](#)

New

[Jade String Bikini](#)

Jade Triangle Top Jade String Bottom

Item number 5 USD 59.90

[Detailed view](#) [Plus shipping and handling](#)

[Plus sales tax](#)

[Detailed view](#)

- [Size Chart](#)
- [Your Color](#)

New

[Mix & Match](#)

Mix & Match any color and size to create your own bikini.

Item number 9 USD 59.90

[Detailed view](#) [Plus shipping and handling](#)

[Plus sales tax](#)

[Detailed view](#)

New

[Pink String Bikini](#)

Pink Triangle Top Pink String Bottom

Item number 4 USD 59.90

[Detailed view](#) [Plus shipping and handling](#)

[Plus sales tax](#)

[Detailed view](#)

- [Home](#)
- [Shop](#)
- [Shopping cart](#)
- [About Us](#)
- [Contact Form](#)
- [Newsletter](#)
- [Customer login](#)
- [Search](#)
- [Bikini Contest](#)

Kini Kai Bikini Contest

12 winners will be chosen by online voters. These winners will be featured in the 2010 Calendar. The contestant with the most votes will become the 2010 Calendar Cover Model.

How to Enter

WHAT DO I NEED?

1. Kini Kai Bikini- Not required but preferred*
 2. Someone to shoot you in the swimwear.
 3. Send photos to contest@kinikaiswimwear.com.
- *No purchase is necessary to enter the Kini Kai Bikini Contest

HOW DO I SUBMIT MY PHOTOS?

All submissions and questions should be sent to Contest@kinikaiswimwear.com.

PHOTO REQUIREMENTS

Images should be no smaller than 1000X1500 pixels (8"x12" @150dpi). Horizontal or vertical images will be considered. Raw or retouched photos will be accepted. Please, break emails into 10mb each.

All entries will be accepted. To be considered for the 2010 calendar, photos must meet the above requirements.

WHAT ARE WE LOOKING FOR?

Photos should be sweet, seductive, fun, and flirty. The sexuality of the photos should be implied not necessarily overt. Use your creativity and submit photos that best exudes your personality, but photos that are deemed too edgy may or may not be accepted. Please submit a minimum of 11 of your best shots, up to 30 will be reviewed.

Remember the back of the suit is just as important as the front. Please provide a couple of back shots in your submission.

Wet shots are highly encouraged but not required. We want to show that the suits look just as good wet as they do dry.

WHAT HAPPENS AFTER I SEND IN MY SHOTS?

Email notification will be sent upon receipt of submission.

Be sure to include with your submission a short paragraph with where you took your pictures, what suit and sizes you wore, and something about you. If you shot with a photographer, please include their email and link so we can give due credit.

WHAT HAPPENS IF I WIN?

Winners will be contacted via email and all prizes sent by mail.

Rules

Models must be over 18 years of age.

Contestants must be wearing Kini Kai Swimwear, no exceptions. Submission of photos wearing any other swimwear will not be accepted.

By submitting pictures and/or other material to Kini Kai Swimwear you acknowledge and accept this sites terms and conditions as outlined in our [Terms of Service and Use](#). Kini Kai Swimwear reserves the right to reject submissions without further explanation. Pictures that are not used will be deleted.

Professional & Semi-Pro models and Photographers are allowed to enter the contest.

Prizes

1st Place: Receives \$1000.00 cash prize, cover of calendar, and choice of month to represent in calendar, and featured spot on KiniKaiSwimwear.com

2nd Place: Receives \$100.00 cash prize, \$50 gift voucher.

3rd - 12th Place: Receives \$100.00 gift voucher and \$50.00 cash prize.

2009 CONTEST SCHEDULE

Submission Due Date : July 31, 2009

Voting Begins : June 1, 2009

Voting Ends : August 31, 2009

- [Home](#)
- [Shop](#)
- [Shopping cart](#)
- [About Us](#)
- [Contact Form](#)
- [Newsletter](#)
- [Customer login](#)
- [Search](#)
- [Bikini Contest](#)

Aloha,

Welcome to our online swimwear store. Our names are Jennifer and Alex. We met in Jacksonville, FL and soon found that we both had a love for traveling, and a special passion for the beach. We travel to the ocean as often as possible. Boogie boarding, surfing, fishing, and walks on the beach are our favorite pastimes. Needless to say we prefer to be in beachwear. Over the years I have found it harder and harder to find a quality suit that is affordable and looks good.

In the past I struggled with fit, comfort, color, and style of available swimwear. It's just hard to find a cute little bikini that fits. You should not have to spend \$100 for an itty bitsy two piece. Another conflict I had was the quality of the swimwear, I was lucky if the suit lasted more than one season without fading or becoming scuffed. The \$30 bikinis just fell apart. The more I searched the more frustrated I became, and the more women I spoke with the more I realized that they had the same difficulties. Rather than continuing a fruitless search for a solution, we decided to create our own.

We spent countless hours researching styles and patterns of bikinis looking for the best fit. We then created prototypes and tested them under various conditions. These prototypes ventured with us to Hawaii. This chain of islands inspired the swimwear line and became the perfect place to test the first suits with its pounding surf and blazing sun. The name KINI KAI, means Jenny Ocean in Hawaiian, and the hibiscus flower found on each suit is the state flower of Hawaii.

We created KINI KAI around a set of core principles; our goal is to provide premium quality, affordable, sexy, sleek, and timeless swimwear. We did not quit until we found the perfect combo that looks just as good wet as it does dry. Trends come and go but the string bikini will always be in style. We want you to be just as happy with your bikini next season as you were with it this season. Everything we offer is interchangeable and customizable to keep things fresh. We want you to have as much fun wearing our bikinis as we had creating them.

Please send us stories and pictures of your adventures wearing KINI KAI Swimwear. Send your stories to kinikai@kinikaiswimwear.com.

Thanks for visiting our shop,

Jennifer and Alex

[Contact Us](#) [GTC](#) [Privacy](#) [Shipping Rates](#) [Return Policy](#)

This online shop was created using I&I eShop



SEARCH
Advanced Search | Search Tips

Home Shipping & Returns Size Chart

Categories

byb1.jpg

Kini Kai Collection

New Products

Get the Look

Shop By Top

Halter Top

Triangle Top

Shop by Bottom

Surf Bottom

String Bottom

Shop by Color

Black

Blue

Brown

Jade

Pink

Purple

Red

Shop Separates

Our Newsletter

Your First Name:

Your Email Address:

SUBSCRIBE

Black String Bottom
with Radical Paradise
Strings

\$25.00

Not Rated

[Choose Options](#)

Radical Paradise String
Bottom

\$25.00

Not Rated

[Choose Options](#)

Paisley String Bottom

\$25.00

Not Rated

[Choose Options](#)

Purple String Bottom

\$25.00

Not Rated

[Choose Options](#)

Pink String Bottom

\$25.00

Not Rated

[Choose Options](#)

Jade String Bottom

\$25.00

Not Rated

[Choose Options](#)

Brown String Bottom

\$25.00

Not Rated

[Choose Options](#)

Blue String Bottom

\$25.00

Not Rated

[Choose Options](#)

Black String Bottom

\$25.00

Not Rated

[Choose Options](#)

Black Surf Bottom

\$25.00

Not Rated

[Choose Options](#)

Red Palm Halter Top

\$35.00

Not Rated

[Choose Options](#)

Radical Paradise Halter
Top

\$35.00

Not Rated

[Choose Options](#)

FREE HOTEL DELIVERY

Visiting Oahu?

EXHIBIT 3

EXHIBIT 3



038 Queen Street, www.hawaiidigital.net
 Honolulu, HI 96814
 Phone: 808-591-6464
 Fax: 808-591-9701

Invoice Number 37484
 P.O. #: 0
 Estimate Number: 0
 Requested Date: No Date Specified
 Ship Via:
 Clerk:
 Order Date: 5/6/2010 - 8:53AM
 Due Date: 5/10/2010 - 4:00 PM
 Printed Date: 5/7/2010 - 8:41:51AM
 External Customer #: 0

Bill To:
KINI KAI SWIMWEAR
 ALEX
 Honolulu, HI
 Phone: 808-551-2519 Ext: / Fax: 808-____-____
 E-Mail: Alex [alex@kinikaiswimwear.com]

Ship To:
KINI KAI SWIMWEAR
 ALEX
 Honolulu, HI
 Phone: 808-551-2519 Ext: / Fax: 808-____-____
 E-Mail: Alex [alex@kinikaiswimwear.com]

INVOICE DESCRIPTION

Product Code	Sides	Color	Quantity	Vert	Horiz	Depth	Price @	Total
B100*Internet*	1	CMYK	1.00	24.00 INCH	60.00 INCH	0.00 FOOT	\$50.00	\$50.00

1- 24" X 60" *Internet Banner Special* 11OZ Vinyl Banner w/Grommets

FILE IN EMAIL

1005

*PAID Alex w/
check 1005*

<input type="checkbox"/>	Check Here If Tax Deductible
To	
For	
Previous Balance:	<i>PAID Alex</i>
Deposits:	<i>Back for Sign Pro</i>
New Balance:	
This Check Amt:	<i>52.36</i>
Balance Forward:	

Notes/Ship to:

Sub-Total	\$50.00
Taxable	\$50.00
Non-Taxable	\$0.00
Sales Tax	\$2.36
Shipping	\$0.00
Total	\$52.36
Deposits	\$52.36
Payments	
Finance Charges	\$0.00
Balance	\$0.00

Customer #: 8257
 Customer Tax ID:
 Terms: C.O.D.
 Salesperson: Hina Kamau
 Date Picked Up:

Clerk: _____ x _____
 Customer Signature

PAID
5/6/10
AM

KINI 0061

SIT NEW CUT 2004
 5905 NEW CUT ROAD
 LOUISVILLE, KY 40214

Bill

Date	Ref. No.
03/25/2009	3/28/2009

Vendor
Kini Kai LLC 310 Harbor Pointe Suite 11 My Pleasant, SC 29464

Bill Due	04/04/2009
Terms	
Memo	125 suites thanks for the Discount

PAID

Expenses

Account	Memo	Amount	Customer:Job
RESALE	kini kai swim wear	3,375.00	

*PAID
 CK 19524
 4/6/09*

Expense Total : 3,375.00

Bill Total : \$3,375.00

Check Payable To:
 Kini Kai LLC
 2541 Kuhio Ave Apt 4C
 Honolulu, HI 96815
 (808) 551-9583

Bill To:
 Southern Island Tan
 5905 New Cut Rd
 Louisville, KY 40214
 (502) 367-8826

Item:	Size	Qty	Price/Piece	Total
Rad String Bottom	XS	2	\$10.00	\$20.00
	S	2	\$10.00	\$20.00
	M	2	\$10.00	\$20.00
	L	2	\$10.00	\$20.00
	XL	2	\$10.00	\$20.00
Blck bottom Rad String	XS	2	\$10.00	\$20.00
	S	2	\$10.00	\$20.00
	M	2	\$10.00	\$20.00
	L	2	\$10.00	\$20.00
	XL	2	\$10.00	\$20.00
Paisley String Bottom	XS	2	\$10.00	\$20.00
	S	2	\$10.00	\$20.00
	M	2	\$10.00	\$20.00
	L	2	\$10.00	\$20.00
	XL	2	\$10.00	\$20.00
Rad Triangle Top	XS	1	\$10.00	\$10.00
	S	1	\$10.00	\$10.00
	M	1	\$10.00	\$10.00

20177

S.I.T., INC. / DBA SOUTHERN ISLAND TAN

Kini Kai Swimwear
 Date Type Reference
 3/15/2010 Bill mailed
 4/1/2010 Bill second

		4/9/2010	
Original Amt.	Balance Due	Discount	Payment
632.00	632.00		632.00
640.00	640.00		640.00
	Check Amount		1,272.00

1,272.00

PRP NATIONAL

537138 (10/09)

	60	\$14.00
		\$640.00

Kini Kai LLC

Sales by Item Summary

January 1, 2009 through November 11, 2011

Jan 1, '09 - Nov 11, '11

	Qty	Amount	% of Sales
Inventory			
J0007	3	6.90	0.1%
J0006	3	7.32	0.1%
J0005	3	9.54	0.2%
J0004	26	93.60	1.8%
J0003	3	6.48	0.1%
J0002	3	10.80	0.2%
J0023	3	10.67	0.2%
J0022	3	15.36	0.3%
J0021	3	16.50	0.3%
J0020	3	16.50	0.3%
J0001	15	6.75	0.1%
Bikini Bottom			
Paisley Surf			
X-Large	4	40.00	0.7%
Large	4	40.00	0.7%
Medium	4	40.00	0.7%
Small	6	90.00	1.7%
X-Small	4	40.00	0.7%
Total Paisley Surf		250.00	4.7%
Black Surf			
X-Large	12	120.00	2.2%
Large	10	100.00	1.9%
Medium	14	170.00	3.2%
Small	12	140.00	2.6%
X-Small	17	215.00	4.0%
Total Black Surf		745.00	13.9%
Paisley String			
X-Large	5	50.00	0.9%
Large	5	60.00	1.1%

Medium	5	50.00	0.9%
Small	4	40.00	0.7%
X-Small	5	71.00	1.3%
Total Paisley String		271.00	5.1%
Black/Pupule String			
X-Large	3	30.00	0.6%
Large	5	50.00	0.9%
Medium	3	30.00	0.6%
Small	4	50.00	0.9%
X-Small	4	50.00	0.9%
Total Black/Pupule String		210.00	3.9%
Pupule String			
X-Large	3	30.00	0.6%
Large	3	30.00	0.6%
Medium	3	30.00	0.6%
Small	3	30.00	0.6%
X-Small	4	50.00	0.9%
Total Pupule String		170.00	3.2%
Brown String			
X-Large	-2	-20.00	-0.4%
Large	-1	-10.00	-0.2%
Medium	-1	-10.00	-0.2%
Small	0	0.00	0.0%
X-Small	2	40.00	0.7%
Total Brown String		0.00	0.0%
Pink String			
X-Large	-1	-10.00	-0.2%
Large	0	0.00	0.0%
Medium	-2	-20.00	-0.4%
Small	-2	-20.00	-0.4%
X-Small	-1	-10.00	-0.2%
Total Pink String		-60.00	-1.1%
Blue String			
X-Large	1	10.00	0.2%
Large	0	0.00	0.0%

Medium	3	30.00	0.6%
Small	-2	-20.00	-0.4%
X-Small	2	20.00	0.4%
Total Blue String		40.00	0.7%
Jade String			
X-Large	0	0.00	0.0%
Large	0	0.00	0.0%
Medium	1	13.00	0.2%
Small	-1	-10.00	-0.2%
X-Small	1	30.00	0.6%
Total Jade String		33.00	0.6%
Purple String			
X-Large	5	50.00	0.9%
Large	4	40.00	0.7%
Medium	6	60.00	1.1%
Small	7	95.00	1.8%
X-Small	6	80.00	1.5%
Total Purple String		325.00	6.1%
Black String			
X-Large	5	50.00	0.9%
Large	5	50.00	0.9%
Medium	5	50.00	0.9%
Small	5	50.00	0.9%
X-Small	5	76.00	1.4%
Total Black String		276.00	5.2%
Total Bikini Bottom		2,260.00	42.3%
Bikini Top			
Red Halter			
X-Large	8	93.00	1.7%
Large	8	93.00	1.7%
Medium	9	123.00	2.3%
Small	8	93.00	1.7%
X-Small	6	73.00	1.4%
Total Red Halter		475.00	8.9%
Paisley String			

X-Large	5	57.00	1.1%
Large	6	60.00	1.1%
Medium	5	50.00	0.9%
Small	5	50.00	0.9%
X-Small	4	40.00	0.7%
Total Paisley String		257.00	4.8%
Paisley Halter			
X-Large	3	35.00	0.7%
Large	7	90.00	1.7%
Medium	8	126.00	2.4%
Small	5	70.00	1.3%
X-Small	4	45.00	0.8%
Total Paisley Halter		366.00	6.8%
Pupule Halter			
X-Large	5	55.00	1.0%
Large	5	55.00	1.0%
Medium	7	85.00	1.6%
Small	6	95.00	1.8%
X-Small	5	55.00	1.0%
Total Pupule Halter		345.00	6.5%
Black Halter			
X-Large	4	45.00	0.8%
Large	4	45.00	0.8%
Medium	6	91.00	1.7%
Small	5	55.00	1.0%
X-Small	4	45.00	0.8%
Total Black Halter		281.00	5.3%
Black/Pupule String			
X-Large	2	20.00	0.4%
Large	3	30.00	0.6%
Medium	2	20.00	0.4%
Small	6	70.00	1.3%
X-Small	3	30.00	0.6%
Total Black/Pupule String		170.00	3.2%
Pupule String			

X-Large	4	35.00	0.7%
Large	4	30.00	0.6%
Medium	5	40.00	0.7%
Small	6	60.00	1.1%
X-Small	4	30.00	0.6%
Total Pupule String		195.00	3.6%
Brown String			
X-Large	0	10.00	0.2%
Large	-1	-10.00	-0.2%
Medium	0	0.00	0.0%
Small	1	20.00	0.4%
X-Small	-1	-10.00	-0.2%
Total Brown String		10.00	0.2%
Pink String			
X-Large	-2	-20.00	-0.4%
Large	-1	-10.00	-0.2%
Medium	1	10.00	0.2%
Small	1	30.00	0.6%
X-Small	-2	-20.00	-0.4%
Total Pink String		-10.00	-0.2%
Blue String			
X-Large	3	40.00	0.7%
Large	-1	-10.00	-0.2%
Medium	3	30.00	0.6%
Small	-2	-20.00	-0.4%
X-Small	1	0.00	0.0%
Total Blue String		40.00	0.7%
Jade String			
X-Large	1	20.00	0.4%
Large	-1	-10.00	-0.2%
Medium	1	10.00	0.2%
Small	4	68.00	1.3%
X-Small	-2	-20.00	-0.4%
Total Jade String		68.00	1.3%
Purple String			

X-Large	4	65.00	1.2%
Large	3	45.00	0.8%
Medium	5	50.00	0.9%
Small	7	115.00	2.2%
X-Small	4	40.00	0.7%
Total Purple String		315.00	5.9%
Black String			
X-Large	4	40.00	0.7%
Large	1	10.00	0.2%
Medium	4	40.00	0.7%
Small	6	80.00	1.5%
X-Small	0	15.00	0.3%
Total Black String		185.00	3.5%
Total Bikini Top		2,697.00	50.4%
Total Inventory		5,157.42	96.4%
Parts			
MISC	2	26.00	0.5%
Gift Card	1	50.00	0.9%
Total Parts		76.00	1.4%
Service			
Scrunch	3	15.00	0.3%
Shipping Sales	14	110.44	2.1%
Total Service		125.44	2.3%
Discounts			
Customer Loyalty	0	-10.00	-0.2%
Total Discounts		-10.00	-0.2%
TOTAL		5,348.86	100.0%

03/10/15

Avg Price	COGS	Avg COGS	Gross Margin	Gross Margin %
2.30	3.45	1.15	3.45	50.0%
2.44	3.66	1.22	3.66	50.0%
3.18	4.77	1.59	4.77	50.0%
3.60	46.80	1.80	46.80	50.0%
2.16	2.16	0.72	4.32	66.7%
3.60	5.40	1.80	5.40	50.0%
3.56	4.86	1.62	5.81	54.5%
5.12	7.59	2.53	7.77	50.6%
5.50	5.58	1.86	10.92	66.2%
5.50	5.49	1.83	11.01	66.7%
0.45	2.25	0.15	4.50	66.7%
10.00	24.48	6.12	15.52	38.8%
10.00	23.16	5.79	16.84	42.1%
10.00	21.84	5.46	18.16	45.4%
15.00	28.50	4.75	61.50	68.3%
10.00	19.24	4.81	20.76	51.9%
	117.22		132.78	53.1%
10.00	61.20	5.10	58.80	49.0%
10.00	46.32	4.63	53.68	53.7%
12.14	65.52	4.68	104.48	61.5%
11.67	51.30	4.28	88.70	63.4%
12.65	72.15	4.24	142.85	66.4%
	296.49		448.51	60.2%
10.00	16.38	3.28	33.62	67.2%
12.00	15.39	3.08	44.61	74.4%

10.00	14.43	2.89	35.57	71.1%
10.00	8.96	2.24	31.04	77.6%
14.20	12.45	2.49	58.55	82.5%
	<u>67.61</u>		<u>203.39</u>	75.1%
10.00	5.46	1.82	24.54	81.8%
10.00	15.39	3.08	34.61	69.2%
10.00	4.81	1.60	25.19	84.0%
12.50	8.96	2.24	41.04	82.1%
12.50	8.30	2.08	41.70	83.4%
	<u>42.92</u>		<u>167.08</u>	79.6%
10.00	5.46	1.82	24.54	81.8%
10.00	5.13	1.71	24.87	82.9%
10.00	4.81	1.60	25.19	84.0%
10.00	4.48	1.49	25.52	85.1%
12.50	8.30	2.08	41.70	83.4%
	<u>28.18</u>		<u>141.82</u>	83.4%
10.00	-9.28	4.64	-10.72	53.6%
10.00	-4.64	4.64	-5.36	53.6%
10.00	-4.64	4.64	-5.36	53.6%
0.00	0.00	0.00	0.00	0.0%
20.00	9.28	4.64	30.72	76.8%
	<u>-9.28</u>		<u>9.28</u>	100.0%
10.00	-4.64	4.64	-5.36	53.6%
0.00	0.00	0.00	0.00	0.0%
10.00	-9.28	4.64	-10.72	53.6%
10.00	-9.28	4.64	-10.72	53.6%
10.00	-4.64	4.64	-5.36	53.6%
	<u>-27.84</u>		<u>-32.16</u>	53.6%
10.00	4.64	4.64	5.36	53.6%
0.00	0.00	0.00	0.00	0.0%

10.00	13.92	4.64	16.08	53.6%
10.00	-9.28	4.64	-10.72	53.6%
10.00	9.28	4.64	10.72	53.6%
	<u>18.56</u>		<u>21.44</u>	53.6%
0.00	0.00	0.00	0.00	0.0%
0.00	0.00	0.00	0.00	0.0%
13.00	4.73	4.73	8.27	63.6%
10.00	-4.53	4.53	-5.47	54.7%
30.00	4.40	4.40	25.60	85.3%
	<u>4.60</u>		<u>28.40</u>	86.1%
10.00	16.38	3.28	33.62	67.2%
10.00	10.26	2.57	29.74	74.4%
10.00	19.24	3.21	40.76	67.9%
13.57	22.40	3.20	72.60	76.4%
13.33	16.60	2.77	63.40	79.3%
	<u>84.88</u>		<u>240.12</u>	73.9%
10.00	25.94	5.19	24.06	48.1%
10.00	25.16	5.03	24.84	49.7%
10.00	23.69	4.74	26.31	52.6%
10.00	22.67	4.53	27.33	54.7%
15.20	21.94	4.39	54.06	71.1%
	<u>119.40</u>		<u>156.60</u>	56.7%
	742.74		1,517.26	67.1%
11.63	36.72	4.59	56.28	60.5%
11.63	34.80	4.35	58.20	62.6%
13.67	38.29	4.25	84.71	68.9%
11.63	30.84	3.86	62.16	66.8%
12.17	19.24	3.21	53.76	73.6%
	<u>159.89</u>		<u>315.11</u>	66.3%

11.40	27.35	5.47	29.65	52.0%
10.00	11.02	1.84	48.98	81.6%
10.00	6.02	1.20	43.98	88.0%
10.00	5.47	1.09	44.53	89.1%
10.00	5.54	1.39	34.46	86.2%
	<u>55.40</u>		<u>201.60</u>	78.4%
11.67	18.36	6.12	16.64	47.5%
12.86	40.60	5.80	49.40	54.9%
15.75	43.76	5.47	82.24	65.3%
14.00	25.70	5.14	44.30	63.3%
11.25	19.24	4.81	25.76	57.2%
	<u>147.66</u>		<u>218.34</u>	59.7%
11.00	27.82	5.56	27.18	49.4%
11.00	29.00	5.80	26.00	47.3%
12.14	38.29	5.47	46.71	55.0%
15.83	30.84	5.14	64.16	67.5%
11.00	24.05	4.81	30.95	56.3%
	<u>150.00</u>		<u>195.00</u>	56.5%
11.25	24.48	6.12	20.52	45.6%
11.25	23.20	5.80	21.80	48.4%
15.17	32.82	5.47	58.18	63.9%
11.00	25.70	5.14	29.30	53.3%
11.25	14.44	3.61	30.56	67.9%
	<u>120.64</u>		<u>160.36</u>	57.1%
10.00	10.94	5.47	9.06	45.3%
10.00	15.42	5.14	14.58	48.6%
10.00	9.62	4.81	10.38	51.9%
11.67	24.00	4.00	46.00	65.7%
10.00	12.48	4.16	17.52	58.4%
	<u>72.46</u>		<u>97.54</u>	57.4%

8.75	21.88	5.47	13.12	37.5%
7.50	20.56	5.14	9.44	31.5%
8.00	24.05	4.81	15.95	39.9%
10.00	25.86	4.31	34.14	56.9%
7.50	15.60	3.90	14.40	48.0%
	<u>107.95</u>		<u>87.05</u>	44.6%
	0.00	0.00	10.00	100.0%
10.00	-4.63	4.63	-5.37	53.7%
0.00	0.00	0.00	0.00	0.0%
20.00	4.63	4.63	15.37	76.9%
10.00	-4.63	4.63	-5.37	53.7%
	<u>-4.63</u>		<u>14.63</u>	146.3%
10.00	-9.26	4.63	-10.74	53.7%
10.00	-4.63	4.63	-5.37	53.7%
10.00	4.63	4.63	5.37	53.7%
30.00	4.63	4.63	25.37	84.6%
10.00	-9.26	4.63	-10.74	53.7%
	<u>-13.89</u>		<u>3.89</u>	-38.9%
13.33	13.89	4.63	26.11	65.3%
10.00	-4.63	4.63	-5.37	53.7%
10.00	13.89	4.63	16.11	53.7%
10.00	-9.26	4.63	-10.74	53.7%
0.00	4.63	4.63	-4.63	100.0%
	<u>18.52</u>		<u>21.48</u>	53.7%
20.00	5.16	5.16	14.84	74.2%
10.00	-4.94	4.94	-5.06	50.6%
10.00	4.73	4.73	5.27	52.7%
17.00	18.16	4.54	49.84	73.3%
10.00	-8.78	4.39	-11.22	56.1%
	<u>14.33</u>		<u>53.67</u>	78.9%

16.25	21.88	5.47	43.12	66.3%
15.00	15.42	5.14	29.58	65.7%
10.00	24.05	4.81	25.95	51.9%
16.43	31.36	4.48	83.64	72.7%
10.00	16.64	4.16	23.36	58.4%
	<u>109.35</u>		<u>205.65</u>	65.3%
10.00	20.63	5.16	19.37	48.4%
10.00	4.94	4.94	5.06	50.6%
10.00	18.92	4.73	21.08	52.7%
13.33	27.24	4.54	52.76	66.0%
	0.00	0.00	15.00	100.0%
	<u>71.73</u>		<u>113.27</u>	61.2%
	<u>1,009.41</u>		<u>1,687.59</u>	62.6%
	1,844.16		3,313.26	64.2%

13.00

50.00

5.00

7.89

EXHIBIT 4

EXHIBIT 4



Kini Kai

MADE IN USA

Sew in
Garment
Tags

Promo
Stickers

FABRIC:
80% NYLON / 20% SPANDEX
LINER:
91% POLYESTER / 9% SPANDEX
HAND WASH COLD SEPARATELY
DO NOT TWIST OR WRING
ONLY NON-CHLORINE BLEACH WHEN
NEEDED / LINE DRY
FOR BEST RESULTS, GARMENTS SHOULD
BE RINSED AND LINE DRIED IMMEDIATELY AFTER USE



2009 Hang Tag



2015 Hang Tag



Kini Kai Bikini

Love Your Bikini Care Guide

- Hand wash cold separately.
- Do not twist or wring.
- Non-chlorine bleach only if needed.
- Garments should be hand-rinsed and lined dried immediately after use for best results.

Keep Your Bikini Looking New Longer

1. Know that chlorine can ruin your swimwear
2. Steer Clear of rough surfaces
3. Avoid getting excess lotions and oils on your swimwear
4. Rinse your bikini in cold water after each wear
5. Avoid washing swimwear in electric washing machines
6. Gently squeeze the water out of your swimwear after washing
7. Do not dry your swimwear in an electric or gas dryer

tips from wikihow.com

Bikini Care Guide 2014 - Present



Kini Kai

www.KiniKaiSwimwear.com

Jennifer Meadors
707-347-9467
PO Box 88242
Honolulu, HI 96830
Jennifer@kinikaiswimwear.com



2009

Business Card

2012 Business Cards



Kini Kai

www.KiniKaiBikini.com

Jennifer Meadors
707-347-9467
Jennifer@kinikaiswimwear.com

Front

Follow Us: @KiniKaiBikini



Back

KINI 0059

EXHIBIT 5

EXHIBIT 5

Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85419812
REGISTRATION NUMBER	4149388
LAW OFFICE ASSIGNED	LAW OFFICE 117
ATTORNEY DOCKET NUMBER	R130 001TM
MARK SECTION	
MARK	KAIKINI
NEW ATTORNEY ADDRESS	
STATEMENT TEXT	By submission of this request, the undersigned updates the attorney information of record.
NAME	Morris E. Turek
FIRM NAME	YourTrademarkAttorney.com
INTERNAL ADDRESS	#220
STREET	167 Lamp and Lantern Village
CITY	Chesterfield
STATE	Missouri
COUNTRY	United States
POSTAL/ZIP CODE	63017-8208
PHONE	(314) 749-4059
FAX	(800) 961-0363
EMAIL	pto@yourtrademarkattorney.com
ATTORNEY AUTHORIZED TO COMMUNICATE VIA E-MAIL	YES
ATTORNEY DOCKET NUMBER	R130 001TM

NEW CORRESPONDENCE ADDRESS

NAME	Morris E. Turek
FIRM NAME	YourTrademarkAttorney.com
DOCKET/REFERENCE NUMBER	R130 001TM
INTERNAL ADDRESS	#220
STREET	167 Lamp and Lantern Village
CITY	Chesterfield
STATE	Missouri
COUNTRY	United States
POSTAL/ZIP CODE	63017-8208
PHONE	(314) 749-4059
FAX	(800) 961-0363
EMAIL	pto@yourtrademarkattorney.com
AUTHORIZED TO COMMUNICATE VIA E-MAIL	YES
SIGNATURE SECTION	
SIGNATURE	/met20/
SIGNATORY NAME	Morris E. Turek
SIGNATORY DATE	09/08/2014
SIGNATORY POSITION	Attorney of record, Missouri bar member
SIGNATORY PHONE NUMBER	(314) 749-4059
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Sep 08 20:43:51 EDT 2014
TEAS STAMP	USPTO/RAA-97.91.180.58-20 140908204351657832-854198 12-500436e53bffee1998c2 219e8b334c1bc581e1b605aea b5da7fb8b5d855b07ad-N/A-N /A-20140908204211697540

Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative

To the Commissioner for Trademarks:

MARK: KAIKINI

SERIAL NUMBER: 85419812

REGISTRATION NUMBER: 4149388

ATTORNEY DOCKET NUMBER R130 001TM

Original Correspondence Address :

TARYN RODIGHIERO
6250 OLOHENA ROAD
KAPAA Hawaii 96746
US
808-634-3000
Taryn@Kaikini.com

By submission of this request, the undersigned updates the attorney information of record.

Newly Appointed Attorney:

Morris E. Turek
YourTrademarkAttorney.com
#220
167 Lamp and Lantern Village
Chesterfield, Missouri 63017-8208
United States
(314) 749-4059
(800) 961-0363
pto@yourtrademarkattorney.com
R130 001TM

The following is to be used as the correspondence address:

Morris E. Turek
YourTrademarkAttorney.com
#220
167 Lamp and Lantern Village
Chesterfield, Missouri 63017-8208
United States

(314) 749-4059
(800) 961-0363
pto@yourtrademarkattorney.com The attorney docket/reference number is R130 001TM.

Signature: /met20/ Date: 09/08/2014
Signatory's Name: Morris E. Turek
Signatory's Position: Attorney of record, Missouri bar member
Signatory's Phone Number: (314) 749-4059

Serial Number: 85419812
Internet Transmission Date: Mon Sep 08 20:43:51 EDT 2014
TEAS Stamp: USPTO/RAA-97.91.180.58-20140908204351657
832-85419812-500436e53bfffed1998c2219e8
b334c1bc581e1b605aeab5da7fb8b5d855b07ad-
N/A-N/A-20140908204211697540

United States of America
United States Patent and Trademark Office

KaiKini

Reg. No. 4,149,388

TARYN RODIGHIERO (HAWAII SOLE PROPRIETORSHIP), DBA KAIKINI
6250 OLOHENA RD
KAPAA, HI 96746

Registered May 29, 2012

Int. Cl.: 25

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 (U.S. CLS. 22 AND 39).

TRADEMARK

PRINCIPAL REGISTER

FIRST USE 10-15-2010; IN COMMERCE 12-1-2010.

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

SER. NO. 85-419,812, FILED 9-11-2011.

ERNEST SHOSHO, EXAMINING ATTORNEY



David J. Kyffers

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

From: TMOfficialNotices@USPTO.GOV
Sent: Tuesday, March 13, 2012 00:29 AM
To: Taryn@Kaikini.com
Subject: Official USPTO Notification: OG Publication Confirmation for Serial Number 85419812

OFFICIAL GAZETTE PUBLICATION CONFIRMATION

Serial Number: 85-419,812
Mark: KAIKINI(STANDARD CHARACTER MARK)
International Class(es): 025
Applicant: Taryn Rodighiero
Docket/Reference Number:

The mark identified above has been published in the *Trademark Official Gazette* (OG) on Mar 13, 2012. Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then within twelve (12) weeks of the publication date a certificate of registration should issue.

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the OG for accuracy (see steps, *below*). If any information is incorrect, the applicant should immediately email the requested correction to **TMPPostPubQuery@uspto.gov**. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

1. Click on the following link or paste the URL into an internet browser:
http://www.uspto.gov/web/trademarks/tmog/20120313_OG.pdf#page=1
2. Wait for the total OG to download completely (as indicated on bottom of OG page).
3. At the top/side of the displayed page, click wherever the "binoculars" icon appears.
4. Enter in the "search" box the name of the applicant (for individual: last name, first name) or the serial number in this exact format (with hyphen and comma): 85-419,812, e.g.
5. View the retrieved result(s). If multiple results appear in the "results" box, click directly on each "search term" shown in the box to access all separate appearances in the OG.

To view this notice and other documents for this application on-line, go to <http://tdr.uspto.gov/search.action?sn=85419812>.

NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

Feb 22, 2012

NOTICE OF PUBLICATION

- | | |
|--------------------------------------|--|
| 1. Serial No.:
85-419,812 | 2. Mark:
KAIKINI
(STANDARD CHARACTER MARK) |
| 3. International Class(es):
25 | |
| 4. Publication Date:
Mar 13, 2012 | 5. Applicant:
Taryn Rodighiero |

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the *Official Gazette* on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the *Official Gazette* containing the publication of the mark may be obtained from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: 202-512-1800

By direction of the Commissioner.

Email Address(es):

Taryn@Kaikini.com

From: TMOOfficialNotices@USPTO.GOV
Sent: Wednesday, February 22, 2012 03:29 AM
To: Taryn@Kaikini.com
Subject: Official USPTO Notification: Issuance of Notice of Publication for Serial Number 85419812

NOTIFICATION OF "NOTICE OF PUBLICATION"

Your trademark application (Serial No. 85419812) is scheduled to publish in the *Official Gazette* on Mar 13, 2012. To preview the Notice of Publication, go to <http://tdr.uspto.gov/search.action?sn=85419812>. If you have difficulty accessing the Notice of Publication, contact TDR@uspto.gov.

PLEASE NOTE:

1. The Notice of Publication may not be immediately available but will be viewable within 24 hours of this e-mail notification.
2. You will receive a second e-mail on the actual "Publication Date," which will include a link to the issue of the *Official Gazette* in which the mark has published.

Do NOT hit "Reply" to this e-mail notification. If you have any questions about the content of the Notice of Publication, contact TMPostPubQuery@uspto.gov.

Trademark Snap Shot Publication & Issue Review Stylesheet

(Table presents the data on Publication & Issue Review Complete)

OVERVIEW

SERIAL NUMBER	85419812	FILING DATE	09/11/2011
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	SHOSHO II, ERNEST	L.O. ASSIGNED	117

PUB INFORMATION

RUN DATE	02/04/2012		
PUB DATE	N/A		
STATUS	681-PUBLICATION/ISSUE REVIEW COMPLETE		
STATUS DATE	02/03/2012		
LITERAL MARK ELEMENT	KAIKINI		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPub 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	KAIKINI

MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Taryn Rodighiero
ADDRESS	6250 Olohena Rd Kapaa, HI 96746
ENTITY	19-SOLE PROPRIETORSHIP
CITIZENSHIP	Hawaii
DBA/AKA	DBA KaiKini
COMPOSED OF	Taryn Rodighiero, a citizen of the United States

GOODS AND SERVICES

INTERNATIONAL CLASS	025
DESCRIPTION TEXT	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

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	025	FIRST USE DATE	10/15/2010	FIRST USE IN COMMERCE DATE	12/01/2010	CLASS STATUS	6-ACTIVE
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MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
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PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
02/03/2012	PREV	O	LAW OFFICE PUBLICATION REVIEW COMPLETED	012
02/01/2012	CNSA	O	APPROVED FOR PUB - PRINCIPAL REGISTER	011
01/27/2012	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	010
01/27/2012	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	009
01/11/2012	ALIE	A	ASSIGNED TO LIE	008

12/28/2011	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	007
12/28/2011	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	006
12/28/2011	GNRT	F	NON-FINAL ACTION E-MAILED	005
12/28/2011	CNRT	R	NON-FINAL ACTION WRITTEN	004
12/28/2011	DOCK	D	ASSIGNED TO EXAMINER	003
09/15/2011	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
09/14/2011	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	NONE
CORRESPONDENCE ADDRESS	TARYN RODIGHIERO TARYN RODIGHIERO 6250 OLOHENA RD KAPAA, HI 96746-8705
DOMESTIC REPRESENTATIVE	NONE

KaiKini

Trademark Snap Shot Publication Stylesheet
(Table presents the data on Publication Approval)

OVERVIEW

SERIAL NUMBER	85419812	FILING DATE	09/11/2011
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	SHOSHO II, ERNEST	L.O. ASSIGNED	117

PUB INFORMATION

RUN DATE	02/02/2012		
PUB DATE	N/A		
STATUS	680-APPROVED FOR PUBLICATON		
STATUS DATE	02/01/2012		
LITERAL MARK ELEMENT	KAIKINI		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPub 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	KAIKINI

MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Taryn Rodighiero
ADDRESS	6250 Olohena Rd Kapaa, HI 96746
ENTITY	19-SOLE PROPRIETORSHIP
CITIZENSHIP	Hawaii
DBA/AKA	DBA KaiKini
COMPOSED OF	Taryn Rodighiero, a citizen of the United States

GOODS AND SERVICES

INTERNATIONAL CLASS	025
DESCRIPTION TEXT	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

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	025	FIRST USE DATE	10/15/2010	FIRST USE IN COMMERCE DATE	12/01/2010	CLASS STATUS	6-ACTIVE
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MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
------------------------	----

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
02/01/2012	CNSA	O	APPROVED FOR PUB - PRINCIPAL REGISTER	011
01/27/2012	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	010
01/27/2012	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	009
01/11/2012	ALIE	A	ASSIGNED TO LIE	008
12/28/2011	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	007

12/28/2011	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	006
12/28/2011	GNRT	F	NON-FINAL ACTION E-MAILED	005
12/28/2011	CNRT	R	NON-FINAL ACTION WRITTEN	004
12/28/2011	DOCK	D	ASSIGNED TO EXAMINER	003
09/15/2011	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
09/14/2011	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	NONE
CORRESPONDENCE ADDRESS	TARYN RODIGHIERO TARYN RODIGHIERO 6250 OLOHENA RD KAPAA, HI 96746-8705
DOMESTIC REPRESENTATIVE	NONE

KaiKini

NOTE TO THE FILE

SERIAL NUMBER: 85419812

DATE: 02/01/2012

NAME: eshoso

NOTE:

Searched:

Google
 Lexis/Nexis
 OneLook
 Wikipedia
 Acronym Finder
 Other:

Discussed ID with:

Senior Atty
 Managing Atty

 Protest evidence reviewed

Checked:

Geographic significance
 Surname
 Translation
 ID with ID/CLASS mailbox

Discussed Geo. Sig. with:

Senior Atty
 Managing Atty

Discussed file with

Attorney/Applicant via:

phone
 email

Requested Law Library search for:
 Issued Examiner's Amendment and entered changes in TRADEUPS

PRINT **DO NOT PRINT** Added design code in TRADEUPS

Description of the mark
 Translation statement Re-imaged standard character drawing

Negative translation statement
 Consent of living individual Contacted TM MADRID ID/CLASS about misclassified definite ID

Changed TRADEUPS to: add composed of statement

OTHER:

From: taryn@kaikini.com [mailto:taryn@kaikini.com]
Sent: Wednesday, February 01, 2012 2:07 PM
To: Shosho, Ernest
Subject: RE: U.S. Trademark Application No. 85419812 KAIKINI
Your statement is correct. Thank you.

Aloha,
Taryn Rodighiero
Founder/ Creative Director

Follow us on:

[Twitter](#)

[Facebook](#)

----- Original Message -----

Subject: U.S. Trademark Application No. 85419812 KAIKINI

From: "Shosho, Ernest" <Ernest.Shosho@USPTO.GOV>

Date: Wed, February 01, 2012 11:05 am

To: "'Taryn@Kaikini.com'" <Taryn@Kaikini.com>

Ms. Rodighiero,

I am the attorney at the United States Patent and Trademark Office handling your application for the trademark KAIKINI. I received your response which included the images of the hangtags as specimens. These are acceptable, however, there was one more issue in my letter of 12/18/11 that was not addressed in your response dealing with your citizenship. As you are listed as a sole proprietorship, I need to enter the name and national citizenship of the sole proprietor.

For example, if you are a US citizen, the following would be entered as the owner of the mark: "Taryn Rodighiero DBA KaiKini, a Hawaiian sole proprietorship, composed of Taryn Rodighiero, a citizen of the United States."

Please let me know if this is correct and I can add this to the record and approve your trademark. If you have any other questions, please let me know.

Best,
Ernest Shosho

Trademark Snap Shot Amendment & Mail Processing Stylesheet
(Table presents the data on Amendment & Mail Processing Complete)

OVERVIEW

SERIAL NUMBER	85419812	FILING DATE	09/11/2011
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	SHOSHO II, ERNEST	L.O. ASSIGNED	117

PUB INFORMATION

RUN DATE	01/28/2012		
PUB DATE	N/A		
STATUS	661-RESPONSE AFTER NON-FINAL-ACTION-ENTERED		
STATUS DATE	01/27/2012		
LITERAL MARK ELEMENT	KAIKINI		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPub 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	KAIKINI

MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Taryn Rodighiero
ADDRESS	6250 Olohena Rd Kapaa, HI 96746
ENTITY	19-SOLE PROPRIETORSHIP
CITIZENSHIP	Hawaii
DBA/AKA	DBA KaiKini

GOODS AND SERVICES

INTERNATIONAL CLASS	025
DESCRIPTION TEXT	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

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	025	FIRST USE DATE	10/15/2010	FIRST USE IN COMMERCE DATE	12/01/2010	CLASS STATUS	6-ACTIVE
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MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
------------------------	----

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
01/27/2012	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	010
01/27/2012	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	009
01/11/2012	ALIE	A	ASSIGNED TO LIE	008
12/28/2011	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	007
12/28/2011	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	006
12/28/2011	GNRT	F	NON-FINAL ACTION E-MAILED	005

12/28/2011	CNRT	R	NON-FINAL ACTION WRITTEN	004
12/28/2011	DOCK	D	ASSIGNED TO EXAMINER	003
09/15/2011	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
09/14/2011	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	NONE
CORRESPONDENCE ADDRESS	TARYN RODIGHIERO TARYN RODIGHIERO 6250 OLOHENA RD KAPAA, HI 96746-8705
DOMESTIC REPRESENTATIVE	NONE

KaiKini

NOTE TO THE FILE

SERIAL NUMBER: 85419812

DATE: 12/28/2011

NAME: eshosho

NOTE:

Searched:

Google
 Lexis/Nexis
 OneLook
 Wikipedia
 Acronym Finder
 Other:

Discussed ID with:

Senior Atty
 Managing Atty

 Protest evidence reviewed

Checked:

Geographic significance
 Surname
 Translation
 ID with ID/CLASS mailbox

Discussed Geo. Sig. with:

Senior Atty
 Managing Atty

Discussed file with

Attorney/Applicant via:

phone
 email

Requested Law Library search for:

PRINT **DO NOT PRINT**

Description of the mark
 Translation statement
 Negative translation statement
 Consent of living individual
 Changed TRADEUPS to:
 OTHER:

Left message with Attorney/Applicant
 Issued Examiner's Amendment and entered changes in TRADEUPS
 Added design code in TRADEUPS
 Re-imaged standard character drawing
 Contacted TM MADRID ID/CLASS about misclassified definite ID

To: Taryn Rodighiero (Taryn@Kaikini.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85419812 - KAIKINI - N/A
Sent: 12/28/2011 8:30:57 AM
Sent As: ECOM117@USPTO.GOV
Attachments: [Attachment - 1](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 85419812

MARK: KAIKINI

85419812

CORRESPONDENT ADDRESS:

TARYN RODIGHIERO
TARYN RODIGHIERO
6250 OLOHENA RD
KAPAA, HI 96746-8705

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Taryn Rodighiero

CORRESPONDENT'S REFERENCE/DOCKET

NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

Taryn@Kaikini.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: **12/28/2011**

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SEARCH OF OFFICE'S DATABASE OF MARKS

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

SOLE PROPRIETORSHIP – NAME AND NATIONAL CITIZENSHIP OMITTED

Applicant is identified in the application as a Hawaiian sole proprietorship. In addition to the applicant name and U.S. state or country of organization provided, however, applicant must also specify the name and national citizenship of the individual person who is the sole proprietor. TMEP §803.03(a).

The following format for identifying a sole proprietorship should be used: "Taryn Rodighiero DBA KaiKini, a Hawaiian sole proprietorship, composed of Taryn Rodighiero, a citizen of the United States." TMEP §803.03(a). The name of the sole proprietorship and the name of the individual can be the same.

If, rather than a sole proprietorship, applicant is instead an individual person doing business under an assumed business name, then the following format should be used: "Taryn Rodighiero, a citizen of the United States, doing business as KaiKini." TMEP §§803.02(a), 803.04.

SPECIMEN REFUSED

The specimen is not acceptable because it does not show the applied-for mark in use in commerce. An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of goods. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

The specimen is not acceptable as evidence of actual trademark use because it is an image of applicant's logo that does not show use of the mark on any of the goods in the application. Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, or displays associated with the actual goods at their point of sale. *See* TMEP §§904.03 *et seq.*

NOTE: The examining attorney has attached an example of a proper specimen. In this specimen, the mark is clearly visible on the hangtag of the actual goods.

Therefore, applicant must submit the following:

- (1) A substitute specimen showing the mark in use in commerce for each class of goods specified in the application; and
- (2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: "**The substitute specimen was in use in commerce at least as early as the filing date of the application.**" 37 C.F.R. §2.59(a); TMEP §904.05; *see* 37 C.F.R. §2.193(e)(1). If submitting a substitute specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

If applicant cannot satisfy the above requirements, applicant may amend the application from a use in commerce basis under Section 1(a) to an intent to use basis under Section 1(b), for which no specimen is required. *See* TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable

allegation of use with a proper specimen. *See* 15 U.S.C. §1051(c), (d); 37 C.F.R. §§2.76, 2.88; TMEP §1103.

To amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: “**Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods listed in the application as of the filing date of the application.**” 37 C.F.R. §2.34(a)(2); TMEP §806.01(b); *see* 15 U.S.C. §1051(b); 37 C.F.R. §§2.35(b)(1), 2.193(e)(1).

Pending receipt of a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a trademark. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

/Ernest Shosho/
Trademark Attorney
Law Office 117
571-272-9705
ernest.shosho@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.



To: Taryn Rodighiero (Taryn@Kaikini.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85419812 - KAIKINI - N/A
Sent: 12/28/2011 8:30:58 AM
Sent As: ECOM117@USPTO.GOV
Attachments:

**IMPORTANT NOTICE REGARDING YOUR TRADEMARK
APPLICATION**

Your trademark application (Serial No. 85419812) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office Action”) on 12/28/2011 to which you must respond. Please follow these steps:

1. Read the Office letter by clicking on this [link](#) **OR** go to <http://tportal.uspto.gov/external/portal/tow> and enter your serial number to [access](#) the Office letter.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. Respond within 6 months, calculated from **12/28/2011** (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System [Response to Office Action form](#). If you have difficulty using the USPTO website, contact TDR@uspto.gov.

3. Contact the examining attorney who reviewed your application with any questions about the content of the office letter:

/Ernest Shosho/
Trademark Attorney
Law Office 117
571-272-9705
ernest.shosho@uspto.gov

WARNING

Failure to file any required response by the applicable deadline will result in the [ABANDONMENT](#) of your application.

Do NOT hit “Reply” to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, please use the Trademark Electronic Application System [Response to Office Action form](#).

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85419812
LAW OFFICE ASSIGNED	LAW OFFICE 117
MARK SECTION (no change)	
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	025
DESCRIPTION	
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	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/15/2010
FIRST USE IN COMMERCE DATE	At least as early as 12/01/2010
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	025
DESCRIPTION	
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	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/15/2010
FIRST USE IN	

COMMERCE DATE	At least as early as 12/01/2010
STATEMENT TYPE	"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" <i>[for an application based on Section 1(a), Use in Commerce]</i> OR "The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use" <i>[for an application based on Section 1(b) Intent-to-Use]</i> .
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	SPU0-6749146248-124843829 . Kaikini-Hangtag.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT11\IMAGEOUT11\854\198\85419812\xml5\ROA0002.JPG
ORIGINAL PDF FILE	SPU0-6749146248-124843829 . KaiKini hangtag back.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT11\IMAGEOUT11\854\198\85419812\xml5\ROA0003.JPG
SPECIMEN DESCRIPTION	I have submitted the front and back of my current hangtag which I attach to every product I wholesale.
SIGNATURE SECTION	
DECLARATION SIGNATURE	/Taryn Rodighiero/
SIGNATORY'S NAME	Taryn Rodighiero
SIGNATORY'S POSITION	Owner
SIGNATORY'S PHONE NUMBER	8086343000
DATE SIGNED	12/28/2011
RESPONSE SIGNATURE	/Taryn Rodighiero/
SIGNATORY'S NAME	Taryn Rodighiero
SIGNATORY'S POSITION	Owner
SIGNATORY'S PHONE NUMBER	8086343000
DATE SIGNED	12/28/2011
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Dec 28 13:06:10 EST 2011

TEAS STAMP

USPTO/ROA-67.49.146.248-2
0111228130610283363-85419
812-4908123737062a8599426
1297295fd102b-N/A-N/A-201
11228124843829720

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 07/31/2017)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **85419812** has been amended as follows:

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 025 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

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 10/15/2010 and first used in commerce at least as early as 12/01/2010 , and is now in use in such commerce.

Proposed: Class 025 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

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 10/15/2010 and first used in commerce at least as early as 12/01/2010 , and is now in use in such commerce.

Applicant hereby submits one(or more) specimen(s) for Class 025 . The specimen(s) submitted consists of I have submitted the front and back of my current hangtag which I attach to every product I wholesale. .

" **The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application**"*[for an application based on Section 1(a), Use in Commerce]* OR "**The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the**

filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use " [for an application based on Section 1(b) Intent-to-Use] .

Original PDF file:

[SPU0-6749146248-124843829 . Kaikini-Hangtag.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

Original PDF file:

[SPU0-6749146248-124843829 . KaiKini_hangtag_back.pdf](#)

Converted PDF file(s) (1 page)

[Specimen File1](#)

SIGNATURE(S)

Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F. R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods and/or services listed in the application as of the application filing date or as of the date of any submitted allegation of use. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 2.44. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /Taryn Rodighiero/ Date: 12/28/2011

Signatory's Name: Taryn Rodighiero

Signatory's Position: Owner

Signatory's Phone Number: 8086343000

Response Signature

Signature: /Taryn Rodighiero/ Date: 12/28/2011

Signatory's Name: Taryn Rodighiero

Signatory's Position: Owner

Signatory's Phone Number: 8086343000

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian attorney/agent, and that he/she is either (1) the applicant or (2) a person(s) with legal authority to bind the applicant; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or the USPTO has granted the request of his/her prior representative to withdraw.

Serial Number: 85419812

Internet Transmission Date: Wed Dec 28 13:06:10 EST 2011

TEAS Stamp: USPTO/ROA-67.49.146.248-2011122813061028

3363-85419812-4908123737062a859942612972

95fd102b-N/A-N/A-20111228124843829720



BIKINIS HANDMADE ON KAUA'I

KAIKINI

follow us on:



hang tag:



KAIKINI.COM



BIKINIS HANDMADE ON KAUA'I

KAIKINI

follow us on:



hang tag:



KAIKINI.COM

*** User:eshosho ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1	N/A	0	0	0:01	85419812[SN]
02	1	0	1	1	0:36	*{"ck"}a{"iy"}{"ck"}{"iy"}n{"iy"}*[bi,ti]
03	3599	N/A	0	0	0:02	*{"ck"}ai*[bi,ti]
04	978	N/A	0	0	0:02	3 and ("025")[cc]
05	391	N/A	0	0	0:02	3 and ("025" "a" "b" "200")[ic]
06	350	N/A	0	0	0:01	kai[bi,ti]
07	133	65	68	61	0:03	6 and ("025")[cc]

Session started 12/28/2011 7:51:22 AM

Session finished 12/28/2011 7:58:11 AM

Total search duration 0 minutes 47 seconds

Session duration 6 minutes 49 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 85419812

Trademark/Service Mark Application, Principal Register

Serial Number: 85419812

Filing Date: 09/11/2011

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85419812
MARK INFORMATION	
*MARK	KaiKini
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	KaiKini
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Taryn Rodighiero
DBA/AKA/TA/Formerly	DBA KaiKini
*STREET	6250 Olohena Rd
*CITY	Kapaa
*STATE (Required for U.S. applicants)	Hawaii
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	96746
PHONE	8086343000
EMAIL ADDRESS	Taryn@Kaikini.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
WEBSITE ADDRESS	www.Kaikini.com
LEGAL ENTITY INFORMATION	

TYPE	sole proprietorship
STATE/COUNTRY WHERE LEGALLY ORGANIZED	Hawaii
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	025
*IDENTIFICATION	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
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/15/2010
FIRST USE IN COMMERCE DATE	At least as early as 12/01/2010
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT11\IMAGEOUT11\854\198\85419812\xml1\ APP0003.JPG
SPECIMEN DESCRIPTION	used on website, on hangtags and on clothing tag for all items currently being used in commerce
CORRESPONDENCE INFORMATION	
NAME	Taryn Rodighiero
FIRM NAME	Taryn Rodighiero
STREET	6250 Olohena Rd
CITY	Kapaa
STATE	Hawaii
COUNTRY	United States
ZIP/POSTAL CODE	96746
PHONE	8086343000
EMAIL ADDRESS	Taryn@Kaikini.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes

FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Taryn Rodighiero/
SIGNATORY'S NAME	Taryn Rodighiero
SIGNATORY'S POSITION	Owner
DATE SIGNED	09/11/2011

Trademark/Service Mark Application, Principal Register

Serial Number: 85419812

Filing Date: 09/11/2011

To the Commissioner for Trademarks:

MARK: KaiKini (Standard Characters, see [mark](#))

The literal element of the mark consists of KaiKini.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Taryn Rodighiero, DBA KaiKini, a sole proprietorship legally organized under the laws of Hawaii, having an address of

6250 Olohena Rd
Kapaa, Hawaii 96746
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 025: 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 International Class 025, the mark was first used at least as early as 10/15/2010, and first used in commerce at least as early as 12/01/2010, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) used on website, on hangtags and on clothing tag for all items currently being used in commerce.

[Specimen File 1](#)

For informational purposes only, applicant's website address is: www.Kaikini.com

The applicant's current Correspondence Information:

Taryn Rodighiero
Taryn Rodighiero
6250 Olohena Rd
Kapaa, Hawaii 96746
8086343000(phone)
Taryn@Kaikini.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Taryn Rodighiero/ Date Signed: 09/11/2011

Signatory's Name: Taryn Rodighiero

Signatory's Position: Owner

RAM Sale Number: 8119

RAM Accounting Date: 09/12/2011

Serial Number: 85419812

Internet Transmission Date: Sun Sep 11 23:24:29 EDT 2011

TEAS Stamp: USPTO/BAS-98.150.148.3-20110911232429325

923-85419812-480b5bed612592850308df1b49e

105d32-CC-8119-20110911224618378064

KaiKini

BIKINIS HANDMADE ON KAUA'I

KAIKI
KINI

KaiKini

BIKINIS HANDMADE ON KAUA'I

KAIKI

EXHIBIT 6

EXHIBIT 6

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

Kini Kai, L.L.C.)
Petitioner,)
v.) Cancellation No. 92059866
Taryn Rodighiero)
Registrant.)
_____)

**REGISTRANT’S RESPONSES TO PETITIONER’S FIRST SET OF
REQUESTS FOR ADMISSIONS**

Registrant Taryn Rodighiero (“Registrant”) hereby responds, under oath, to Petitioner’s First Set of Requests for Admissions as follows:

REQUEST NO. 1:

Admit that you did not sell any KaiKini branded bottoms on or before September 11, 2011.

RESPONSE: Denied

REQUEST NO. 2:

Admit that you have never sold any KaiKini branded bottoms.

RESPONSE: Denied

REQUEST NO. 3:

Admit that you did not sell any KaiKini branded wrap-arounds on or before September 11, 2011

RESPONSE: Admitted

REQUEST NO. 4:

Admit that you have never sold any KaiKini branded wrap-arounds.

RESPONSE: Admitted

REQUEST NO. 5:

Admit that you did not sell any KaiKini branded headbands on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 6:

Admit that you have never sold any KaiKini branded headbands.

RESPONSE: Admitted

REQUEST NO. 7:

Admit that you did not sell any KaiKini branded hoods on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 8:

Admit that you have never sold any KaiKini branded hoods.

RESPONSE: Admitted

REQUEST NO. 9:

Admit that you did not sell any KaiKini branded infant and toddler one piece clothing on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 10:

Admit that you have never sold any KaiKini branded infant and toddler one piece clothing.

RESPONSE: Denied

REQUEST NO. 11:

Admit that you did not sell any KaiKini branded infant cloth diapers on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 12:

Admit that you have never sold any KaiKini branded infant cloth diapers.

RESPONSE: Admitted

REQUEST NO. 13:

Admit that you did not sell any KaiKini branded jackets on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 14:

Admit that you have never sold any KaiKini branded jackets.

RESPONSE: Admitted

REQUEST NO. 15:

Admit that you did not sell any KaiKini branded jerseys on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 16:

Admit that you have never sold any KaiKini branded jerseys.

RESPONSE: Admitted

REQUEST NO. 17:

Admit that you did not sell any KaiKini branded shoulder wraps on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 18:

Admit that you have never sold any KaiKini branded.

RESPONSE: This Request appears to be incomplete. Cannot admit or deny.

REQUEST NO. 19:

Admit that you did not sell any KaiKini branded board shorts on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 20:

Admit that you have never sold any KaiKini branded board shorts.

RESPONSE: Admitted

REQUEST NO. 21:

Admit that you did not sell any KaiKini branded rash guards on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 22:

Admit that you have never sold any KaiKini branded rash guards.

RESPONSE: Admitted

REQUEST NO. 23:

Admit that you did not sell any KaiKini branded tops on or before September 11, 2011.

RESPONSE: Denied

REQUEST NO. 24:

Admit that you have never sold any KaiKini branded tops.

RESPONSE: Denied

REQUEST NO. 25:

Admit that you did not sell any KaiKini branded triathlon tights on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 26:

Admit that you have never sold any KaiKini branded triathlon tights.

RESPONSE: Admitted

REQUEST NO. 27:

Admit that you did not sell any KaiKini branded triathlon shorts on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 28:

Admit that you have never sold any KaiKini branded triathlon shorts.

RESPONSE: Admitted

REQUEST NO. 29:

Admit that you did not sell any KaiKini branded triathlon singlets on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 30:

Admit that you have never sold any KaiKini branded triathlon singlets.

RESPONSE: Admitted

REQUEST NO. 31:

Admit that you did not sell any KaiKini branded triathlon shirts on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 32:

Admit that you have never sold any KaiKini branded triathlon shirts.

RESPONSE: Admitted

REQUEST NO. 33:

Admit that you did not sell any KaiKini branded shirts on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 34:

Admit that you have never sold any KaiKini branded shirts.

RESPONSE: Denied

REQUEST NO. 35:

Admit that you did not sell any KaiKini branded dresses on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 36:

Admit that you have never sold any KaiKini branded dresses.

RESPONSE: Admitted

REQUEST NO. 37:

Admit that you did not sell any KaiKini branded skirts on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 38:

Admit that you have never sold any KaiKini branded skirts.

RESPONSE: Admitted

REQUEST NO. 39:

Admit that you did not sell any KaiKini branded blouses on or before September 11, 2011.

RESPONSE: Admitted

REQUEST NO. 40:

Admit that you have never sold any KaiKini branded blouses.

RESPONSE: Admitted

EXHIBIT 7

EXHIBIT 7

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

Kini Kai, L.L.C.)
Petitioner,)
v.) Cancellation No. 92059866
Taryn Rodighiero)
Registrant.)
_____)

REGISTRANT’S RESPONSES TO PETITIONER’S FIRST SET OF INTERROGATORIES

Registrant Taryn Rodighiero (“Registrant”) hereby responds, under oath, to Petitioner’s First Set of Interrogatories as follows:

INTERROGATORY NO. 1:

Describe in detail your basis for your denial in Paragraph 7 of your Answer of each and every allegation set forth in Paragraph 7 of the Petition to Cancel, including all facts which support your denials and identifying all documents, communications, and witnesses supporting this allegation.

RESPONSE: Registrant’s denial was based on the fact that she was using her mark on or in connection with some of the goods listed in the registration when she filed the underlying application, and that she is currently using her mark on or in connection with some of the goods identified in the registration.

INTERROGATORY NO. 2:

Describe in detail your basis for your denial in Paragraph 8 of your Answer of each and every allegation set forth in Paragraph 8 of the Petition to Cancel, including all facts which support your denials and identifying all documents, communications, and witnesses supporting this allegation.

RESPONSE: Registrant never made any declaration in bad faith in an attempt to perpetrate a fraud upon the PTO. Registrant was completely unaware that her mark had to be in use in connection with all of the products listed in the application. She believed that her mark only had to be in use in connection with at least one of the products listed in the application. As such, she also included products with which she legitimately intended to use her mark as her business continued to grow and expand.

INTERROGATORY NO. 3:

Describe in detail your basis for your denial in Paragraph 13 of your Answer of each and every allegation set forth in Paragraph 13 of the Petition to Cancel, including all facts which support your denials and identifying all documents, communications, and witnesses supporting this allegation.

RESPONSE: Petitioner will not be damaged by the continued registration of Registrant's mark because the marks are not confusingly similar in terms of appearance, sound, meaning, or commercial impression. In addition, Petitioner has produced no evidence to Registrant regarding its products or its alleged prior use of its mark.

Respectfully submitted,

AS TO ANSWERS:

 /Taryn Rodighiero/
Taryn Rodighiero, Registrant

Dated: 12/12/2014

TARYN RODIGHIERO

By: /met20/
Morris E. Turek
YourTrademarkAttorney.com
167 Lamp and Lantern Village, #220
Chesterfield, MO 63017-8208
Tel: (314) 749-4059
Fax: (800) 961-0363
morris@yourtrademarkattorney.com

Dated: 12/12/2014

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served by emailing said copy on 12/12/2014 to:

Mark Borghese
Attorney for Petitioner
mark@borgheselegal.com
docket@borgheselegal.com

 /met20/
Morris E. Turek, Attorney for Registrant

EXHIBIT 8

EXHIBIT 8

To: Kini Kai L.L.C. (mark@borgheselegal.com)

Subject: U.S. TRADEMARK APPLICATION NO. 86375743 - KINI KAI - KINIKAI.002T

Sent: 12/19/2014 1:11:42 PM

Sent As: ECOM112@USPTO.GOV

Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

<p>U.S. APPLICATION SERIAL NO. 86375743</p> <p>MARK: KINI KAI</p>	<p align="center">*86375743*</p>
<p>CORRESPONDENT ADDRESS: MARK BORGHESE BORGHESE LEGAL, LTD. 10161 PARK RUN DR STE 150 LAS VEGAS, NV 89145-8872</p>	<p align="center">CLICK HERE TO RESPOND TO THIS I http://www.uspto.gov/trademarks/teas/response VIEW YOUR APPLICATION FILE</p>
<p>APPLICANT: Kini Kai L.L.C.</p>	
<p>CORRESPONDENT'S REFERENCE/DOCKET NO : KINIKAI.002T CORRESPONDENT E-MAIL ADDRESS: mark@borgheselegal.com</p>	

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 12/19/2014

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 4149388. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

For the reasons discussed below, the examining attorney concludes that confusion as to the source of goods is likely between the applicant's mark KINI KAI for "Shirts; Swimwear" and the registrant's mark KAIKINI 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."

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. *See In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

In any likelihood of confusion determination, two key considerations are similarity of the marks and similarity or relatedness of the goods and/or services. *Syndicat Des Proprietaires Viticulteurs De Chateauneuf-Du-Pape v. Pasquier DesVignes*, 107 USPQ2d 1930, 1938 (TTAB 2013) (citing *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976)); *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); *see* TMEP §1207.01. That is, the marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression.

In re Viterra Inc., 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Additionally, the goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. *See Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §1207.01, (a)(vi).

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial

impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F. 3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re 1st USA Realty Prof’ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007)); TMEP §1207.01(b).

Confusion is likely between two marks consisting of reverse combinations of the same elements if they convey the same meaning or create substantially similar commercial impressions. TMEP §1207.01(b)(vii); *see, e.g., In re Wine Soc’y of Am. Inc.*, 12 USPQ2d 1139, 1142 (TTAB 1989) (holding THE WINE SOCIETY OF AMERICA and design, for “wine club membership services including the supplying of printed materials, sale of wines to members, conducting wine tasting sessions and recommending specific restaurants offering wines sold by applicant,” likely to be confused with AMERICAN WINE SOCIETY 1967 and design, for a newsletter, bulletin and journal of interest to members of the registrant); *In re Nationwide Indus. Inc.*, 6 USPQ2d 1882, 1884 (TTAB 1988) (holding RUST BUSTER, with “RUST” disclaimed, for a rust-penetrating spray lubricant likely to be confused with BUST RUST for a penetrating oil).

In this case, the marks are mere transpositions of the identical terms KINI and KAI. The registrant’s mark is KaiKini and the applicant’s mark is Kini Kai. In fact, the terms KAI and KINI are the only elements in each of the marks. The mere transposition of the terms in the applicant’s mark is insufficient to obviate the likelihood of confusion with the registrant’s mark.

The goods and/or services of the parties need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”); TMEP §1207.01(a)(i).

The respective goods and/or services need only be “related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

The goods of the parties are identical, namely, shirts and swimwear. The goods of the parties are related and are likely to be marketed within the same trade channels. The goods of both parties are likely to be displayed in close proximity in various stores and retail establishments.

Where the goods and/or services of an applicant and registrant are identical or virtually identical, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse goods and/or services. *See United Global Media Grp., Inc. v. Tseng*, 112 USPQ2d 1039, 1049 (TTAB 2014) (quoting *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992)); TMEP §1207.01(b).

The marks are virtually identical. The goods are identical. The similarities among the marks and the goods are so great as to create a likelihood of confusion among consumers. The overriding concern is not

only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

TRANSLATION OF FOREIGN WORDING

Applicant must submit an English translation of all foreign wording in the mark. 37 C.F.R. §2.32(a)(9); *see* TMEP §809. In the present case, the wording "KINI KAI" requires translation.

The following translation statement is suggested:

The English translation of the word "KINI KAI" in the mark is "_____ [applicant must provide a translation for the foreign wording]".

TMEP §809.03. See attached translation evidence.

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

TEAS PLUS APPLICANTS – TO MAINTAIN REDUCED FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE:

Applicants who filed their application online using the lower-fee TEAS Plus application form must (1) continue to submit certain documents online using TEAS, including responses to Office actions (see TMEP §819.02(b) for a complete list of these documents); (2) accept correspondence from the USPTO via e-mail throughout the examination process; and (3) maintain a valid e-mail address. *See* 37 C.F.R. §2.23(a)(1), (a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these three requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. However, in certain situations, authorizing an examiner's amendment by telephone will not incur this additional fee.

/Sharon A. Meier/

Trademark Attorney, LO112

571-272-9195 phone
571-273-9112 fax
sharon.meier1@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

DESIGN MARK

Serial Number

85419812

Status

CANCELLATION PENDING

Word Mark

KAIKINI

Standard Character Mark

Yes

Registration Number

4149388

Date Registered

2012/05/29

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Taryn Rodighiero DBA KaiKini SOLE PROPRIETORSHIP HAWAII 6250 Olohena Rd Kapaa HAWAII 96746

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: 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. First Use: 2010/10/15. First Use In Commerce: 2010/12/01.

Filing Date

2011/09/11

Examining Attorney

SHOSHO, ERNEST

Print: Dec 18, 2014

85419812

Attorney of Record
Morris E. Turek

KaiKini

To: Kini Kai L.L.C. (mark@borgheselegal.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86375743 - KINI KAI - KINIKAI.002T
Sent: 12/19/2014 1:11:43 PM
Sent As: ECOM112@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **12/19/2014** FOR U.S. APPLICATION SERIAL NO. 86375743

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on “Documents.”

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **12/19/2014** (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit “Reply” to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the

ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay “fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

EXHIBIT 9

EXHIBIT 9

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		
----------------------	---	--	--

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
--

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: 

Mark Borghese, Esq.
Borghese Legal, Ltd.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Tel: (702) 382-0200
Fax: (702) 382-0212
Email: mark@borgheselegal.com
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

EXHIBIT 10

EXHIBIT 10

ESTTA Tracking number: **ESTTA626945**

Filing date: **09/13/2014**

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

Proceeding	92059866
Party	Defendant Taryn Rodighiero dba KaiKini
Correspondence Address	TARYN RODIGHIERO 6250 OLOHENA ROAD KAPAA, HI 96746 UNITED STATES Taryn@Kaikini.com
Submission	Answer
Filer's Name	Morris E. Turek
Filer's e-mail	morris@yourtrademarkattorney.com
Signature	/met20/
Date	09/13/2014
Attachments	Rodighiero Answer.pdf(131858 bytes)

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

Kini Kai, L.L.C.)
Petitioner,)
v.) Cancellation No. 92059866
Taryn Rodighiero)
Registrant.)
_____)

**REGISTRANT’S ANSWER TO PETITIONER’S
PETITION FOR CANCELLATION**

In answer to the Petition for Cancellation filed by Petitioner Kini Kai, L.L.C., Registrant Taryn Rodighiero states the following:

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Petition for Cancellation and, accordingly, denies each and every allegation set forth therein.
2. Registrant admits the allegations set forth in Paragraph 2 of the Petition for Cancellation.
3. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Petition for Cancellation and, accordingly, denies each and every allegation set forth therein.
4. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 of the Petition for Cancellation and, accordingly, denies each and every allegation set forth therein.

5. Registrant admits the allegations set forth in Paragraph 5 of the Petition for Cancellation.

FRAUD

6. Registrant admits only that she submitted a sworn declaration to the PTO in connection with Application Serial No. 85419812, and that her application recited a first use in commerce date of at least as early as December 1, 2010. Registrant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 6 of the Petition for Cancellation and, accordingly, denies each and every remaining allegation set forth therein.

7. Registrant denies each and every allegation set forth in Paragraph 7 of the Petition for Cancellation.

8. Registrant denies each and every allegation set forth in Paragraph 8 of the Petition for Cancellation.

9. Registrant admits only that the PTO approved Application Serial No. 85419812 and that it resulted in Registration No. 4,149,388, which issued on May 29, 2012. Registrant denies each and every remaining allegation set forth in Paragraph 9 of the Petition for Cancellation.

10. Registrant denies each and every allegation set forth in Paragraph 10 of the Petition for Cancellation.

LIKELIHOOD OF CONFUSION

11. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 of the Petition for Cancellation and, accordingly, denies each and every allegation set forth therein.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served by sending said copy on 9/13/2014 via First-Class Mail, postage pre-paid, to:

Mark Borghese
Borghese Legal Ltd.
10161 Park Run Dr., Suite 150
Las Vegas, NV 89145

/met20/
Morris E. Turek, Attorney for Registrant

EXHIBIT 11

EXHIBIT 11



PHOTO



brookiesurf

🕒 9h

📍 Playa Popoyo, Nicaragua



♥️ 111 likes

👤 **brookiesurf** Feels so goooood being back in the water 😁

wachewdo Tell max the monkey and the two Spanish parrot I say hi.

mekenzieosborne 😍😍😍😍

brookiesurf They said they miss you @wachewdo

thodges814 I'm so jealous, ready to get out of this wetsuit!



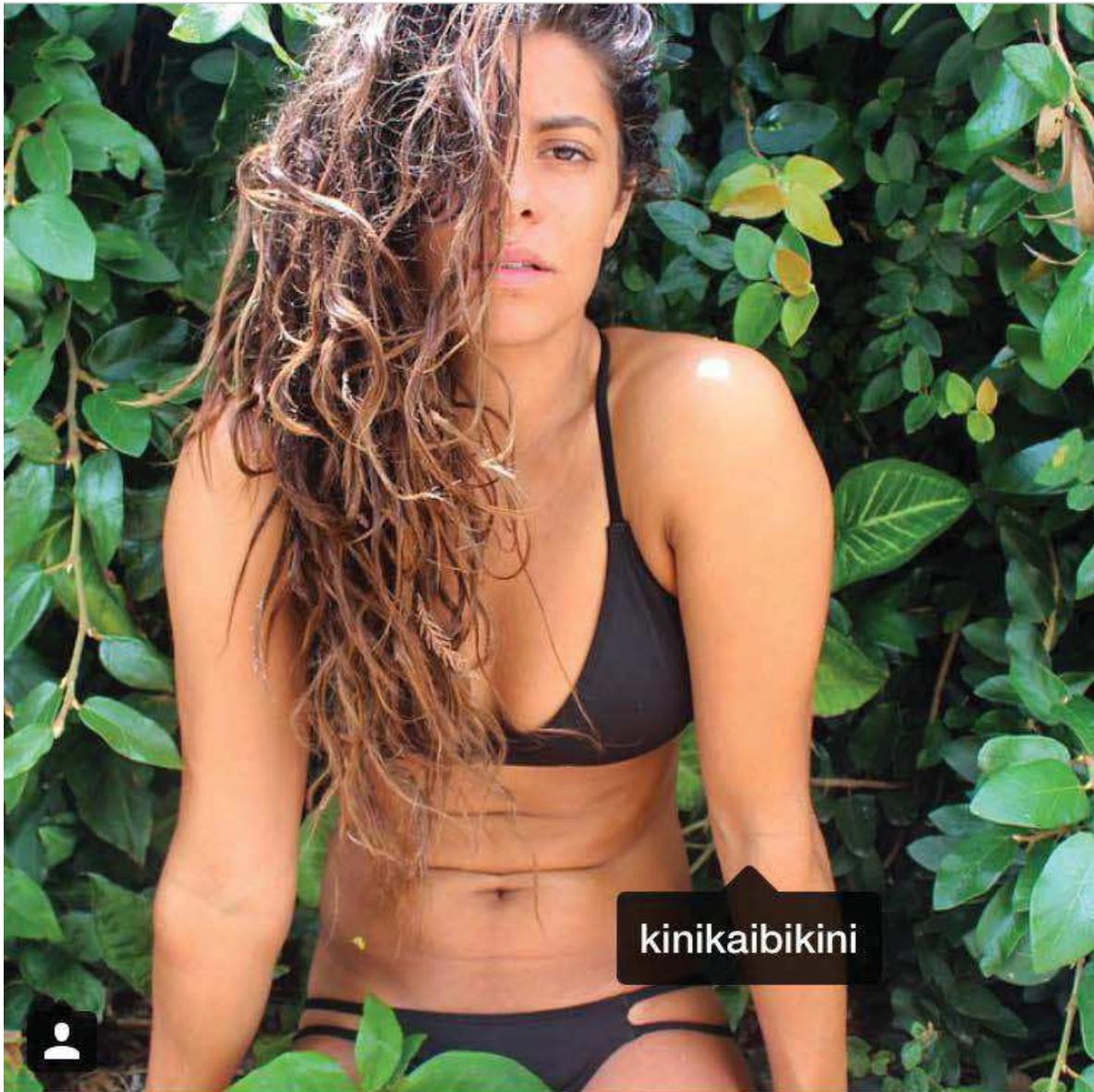


PHOTO



shayellelajoie

🕒 15w



📄 884 likes

shayellelajoie 🌿🌿🌿 chillehhhn with @kaikinibikinis 🌍🌍🍄

view all 32 comments

openklosetfashion Gorgeous 💙💙💙

shayellelajoie #wlyg

behkee Such a babe



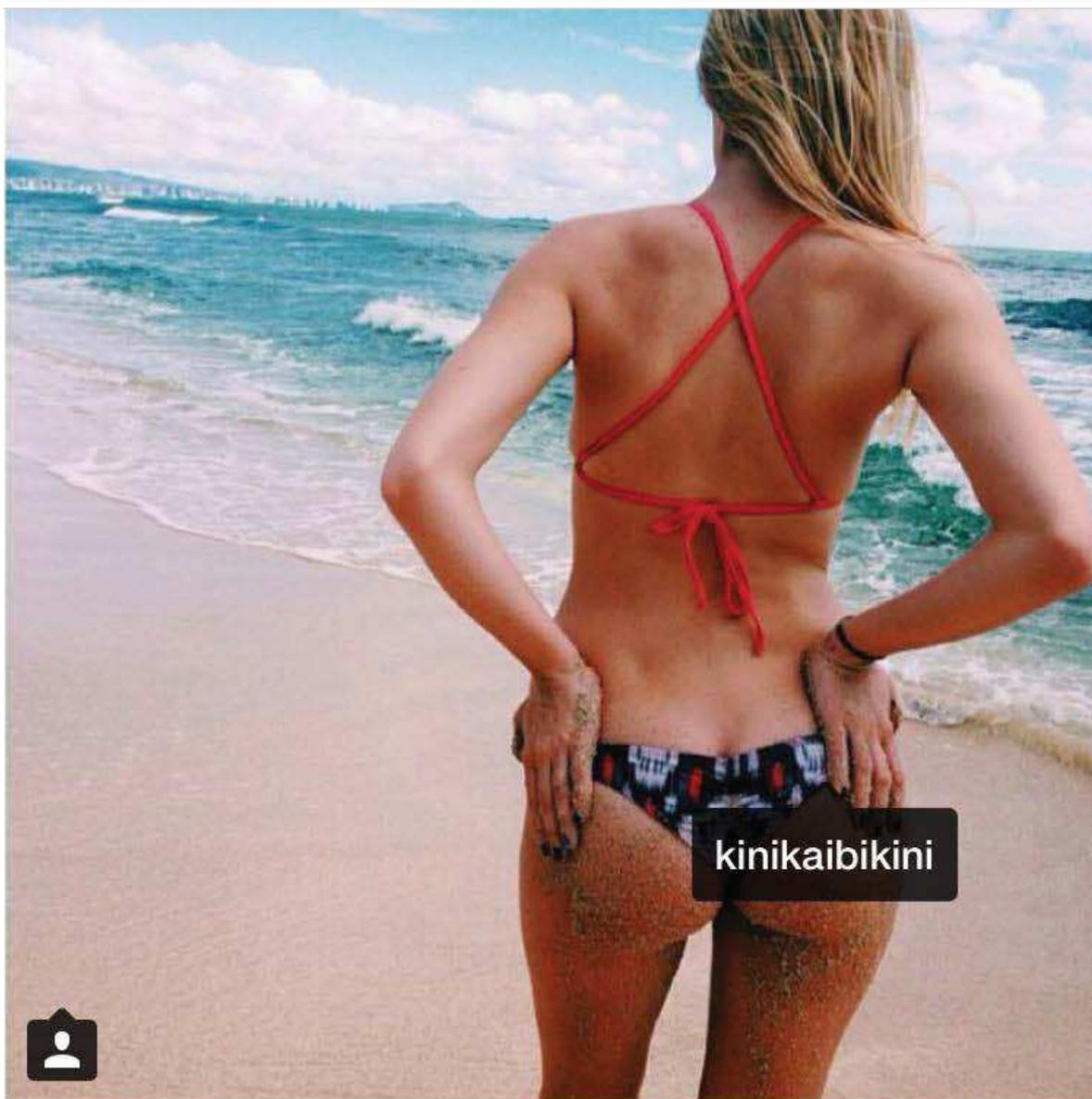


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67 likes

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 \$75 \$105 | Size: S | To Die F...

lkr414
 Like • Comment • Share

stylzoo

missbikinimodel I would love to trade for these! What are you looking for? I have more than whats in my closet!

lkr414 @missbikinimodel sorry I'm just looking to sell right now

All 12 Comments



To Die For Bikini NWT
 \$70 \$85 | Size: M- t... | To Di...

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KaiKini Bottoms
 \$35 \$54 | Size: S | KaiKini

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KiniKai Thong Bikini Bottom
 \$40 \$60 | Size: S/M | KiniKai

lkr414
 Like • Comment • Share

9 likes



KiniKai Bikini Bottom
 \$40 \$55 | Size: M | KaiKini

lkr414
 Like • Comment • Share

6 likes

knhc1r Ok thx! I will keep in my likes for now. Need to make some sales first. 🙌👍

lkr414 @knhc1r ok great thanks for letting me know!

All 6 Comments



8 likes

jenuine Is the first picture and bottom picture the same item.

lkr414 @jenuine yes both were from kaikini website...

All 12 Comments

alexamuinee Could you do 20 for

