

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: December 16, 2015

Cancellation No. 92060901 and 92060902¹

Cupid Charities, Inc.

v.

The DEW, LLC dba Undie Run

Cancellation No. 92060918

Cupid Charities, Inc.

v.

The DEW LLC

**Denise M. DelGizzi,
Chief Clerk of the Board:**

In response to the Board's order of November 5, 2015, Petitioner submitted a copy of an order certified by the United States District Court for the District of Colorado,² entering judgment against The Dew, LLC on September 22, 2015 and ordering the United States Patent and Trademark Office to cancel U.S. Registration Nos. 4615907, 4615908, and 4133557.

¹ Although not consolidated, for administrative convenience the Board has exercised its discretion to issue a joint order with respect to the above-captioned cancellation proceedings, since the court order involves the registrations involved in all three proceedings.

² Styled as *Cupid Charities, Inc., v. The DEW, LLC*, Civil Action No. 1:15-cv-00348-WYD-KLM.

Cancellation Nos. 92060901, 92060902, and 92060918

Section 37 of the Trademark Act, 15 U.S.C. § 1119, provides:

In any action involving a registration mark the court may determine the right to registration, or order the cancellation of registrations, in whole or in part, restore canceled registrations, and otherwise rectify the register with respect to the registrations of any party to the action. Decrees and orders shall be certified by the court to the Director, who shall make appropriate entry upon the records of the Patent and Trademark Office, and shall be controlled thereby.

The District Court's order to cancel Registration Nos. 4615907, for the mark UNDIE RUN, 4615908, for the mark UNDIE RUN, and 4133557, for the mark UNDIE RUN, has been certified by the United States District Court for the District of Colorado. While the Board's jurisdiction is concurrent with that of the District Court in the United States, "where a court of competent jurisdiction '(i)n any action involving a registered mark' determines the respective right of the parties before it to registration under the Trademark Act, that determination is binding upon the Commissioner pursuant to Section 37 of the Trademark Act." In re *Wells Fargo & Company*, 231 USPQ 95, 104 (TTAB 1986) (citing *Avon Shoe Co. v. David Crystal, Inc.*, 279 F. 2d 607, 125 USPQ 607, 614 (2d Cir. 1960)).

Accordingly, pursuant to the order of the United States District Court for the District of Colorado, and in accordance with Trademark Act Section 37, the above-captioned petitions to cancel are granted and Registration Nos. 4615907, 4615908, and 4133557 will be cancelled in due course.