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Filing date: **08/10/2015**

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	JD Fine & Company		
Entity	Corporation	Citizenship	California
Address	179 Mason Circle Concord, CA 94520 UNITED STATES		

Attorney information	Michael P. Martin Fischbach, Perlstein, Lieberman & Almond, LLP 1925 Century Park East, Suite 2050 Los Angeles, CA 90067 UNITED STATES mmartin@fpllaw.com Phone:3105561956		
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Registration Subject to Cancellation

Registration No	4760861	Registration date	06/23/2015
Registrant	Sparling, Alexis Meredith 313 Clinton Avenue #3 Brooklyn, NY 11205 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2013/07/04 First Use In Commerce: 2013/07/08 All goods and services in the class are cancelled, namely: Swimwear

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)
Dilution	Trademark Act section 43(c)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2579706	Application Date	02/24/2000
Registration Date	06/11/2002	Foreign Priority Date	NONE
Word Mark	TART		

Design Mark	TART		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2000/02/24 First Use In Commerce: 2000/02/24 Jackets, skirts, dresses, pants, capri pants, T-shirts, tank tops, crop tops, halter tops, camisoles, slips, bra tops, thongs, panties, boxer shorts, boy shorts, night-gowns, chemises and robes		

U.S. Registration No.	2650009	Application Date	02/24/2000
Registration Date	11/12/2002	Foreign Priority Date	NONE
Word Mark	LEMON TART		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2000/02/24 First Use In Commerce: 2000/02/24 Jackets, skirts, dresses, pants, Capri pants, T-shirts, tank tops, crop tops, halter tops, camisoles, slips, bra tops, thongs, panties, boxer shorts, boy shorts, night-gowns, chemises and robes		

U.S. Registration No.	4064083	Application Date	06/30/2006
Registration Date	11/29/2011	Foreign Priority Date	NONE
Word Mark	TART		
Design Mark	TART		
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2010/11/26 First Use In Commerce: 2010/11/26 Sunglasses, eyeglasses, frames for sunglasses and eyeglasses, and cases for sunglasses and eyeglasses Class 014. First use: First Use: 2010/11/26 First Use In Commerce: 2010/11/26		

	<p>jewelry Class 018. First use: First Use: 2010/11/26 First Use In Commerce: 2010/11/26 [Purses, handbags, tote bags, cosmeticcases sold empty, toiletry cases sold empty, coin purses, wallets] Class 035. First use: First Use: 2010/11/26 First Use In Commerce: 2010/11/26 Retail store services and mail order catalogue services featuring clothing and clothing accessories</p>
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U.S. Registration No.	4229470	Application Date	02/29/2012
Registration Date	10/23/2012	Foreign Priority Date	NONE
Word Mark	TART NOIR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2007/08/30 First Use In Commerce: 2007/08/30 Dresses; Lingerie; Shirts; Tops; Undergarments		

U.S. Registration No.	4655936	Application Date	04/30/2014
Registration Date	12/16/2014	Foreign Priority Date	NONE
Word Mark	TART COLLECTIONS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2002/06/00 First Use In Commerce: 2002/06/00 Camisoles; Capri pants; Crop tops; Dresses; Halter tops; Jackets; Leggings; Pants; Skirts; Sweaters; T-shirts; Tank tops		

U.S. Registration No.	4655980	Application Date	04/30/2014
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Registration Date	12/16/2014	Foreign Priority Date	NONE
Word Mark	TART INTIMATES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2004/03/00 First Use In Commerce: 2004/03/00 Baby doll pyjamas; Bras; Chemises; Lingerie; Loungewear; Nightgowns; Panties; Robes; Shapewear, namely, hipsters, cheekies, babydolls and boy-shorts; Sleepwear; Thong underwear		

U.S. Application No.	86267570	Application Date	04/30/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TART SWIM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2013/06/00 First Use In Commerce: 2013/06/00 Beach coverups; Coverups; Shorts; Swimsuits		

U.S. Application No.	86555299	Application Date	03/06/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TART COLLECTIONS MATERNITY		

Design Mark	TART COLLECTIONS MATERNITY		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2013/05/00 First Use In Commerce: 2013/05/00 Maternity clothing, namely, dresses, blouses, tops, T-shirts, tank-tops, skirts, shorts, pants, leggings, sweaters, wraps, jumpers, rompers		

U.S. Application No.	86555294	Application Date	03/06/2015
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	TART MATERNITY		
Design Mark	TART MATERNITY		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2013/05/00 First Use In Commerce: 2013/05/00 Maternity clothing, namely, dresses, blouses, tops, T-shirts, tank-tops, skirts, shorts, pants, leggings, sweaters, wraps, jumpers, rompers		

Attachments	75927916#TMSN.png(bytes) 78921445#TMSN.png(bytes) 85555724#TMSN.png(bytes) 86266699#TMSN.png(bytes) 86268083#TMSN.png(bytes) 86267570#TMSN.png(bytes) 86555299#TMSN.png(bytes) 86555294#TMSN.png(bytes) PetitionToCancel.pdf(35833 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	/Michael P. Martin/
Name	Michael P. Martin
Date	08/10/2015

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

In the Matter of Trademark Registration

Registration No.: 4760861
Registered: June 23, 2015
Mark: SWIMTARTE
Int'l Class: 25

JD FINE & COMPANY, a California
Corporation

Petitioner,

v.

ALEXIS MERIDETH SPARLING, A United
States Citizen.

Registrant.

Cancellation No.:

PETITION FOR CANCELLATION

Sir:

Petitioner, JD FINE & COMPANY (hereafter "Petitioner") a California Corporation believes that it will be damaged by Registration No. 4760861, as shown in the records of the United States Patent and Trademark Office to be owned by Registrant, ALEXIS

MERIDETH SPARLING (hereafter “Registrant”), and hereby petitions to cancel the same pursuant to Section 14(3) or 14(5) of the Trademark Act, 15 U.S.C. § 1064(3) and 1064(5).

The grounds for cancellation are as follows:

1. Registrant filed a U.S. Trademark application for SWIMTARTE on or about July 22, 2013 for swimwear in Class 25. The application claims a first use date of July 4, 2013, ultimately issuing into Registration No. 4760861.

2. Petitioner manufactures, sells, distributes, advertises, and licenses various types of clothing and accessories under its well-known TART line of trademarks. Petitioner utilizes its TART trademarks in various combinations on its products, in sales catalogs, online and in advertising to identify them as originating from Petitioner. Petitioner’s TART marks are extremely well-known in the United States and worldwide. This high level of name recognition among the public gives these marks lucrative appeal.

3. In addition to the longstanding use and goodwill mentioned above, Petitioner has registered its TART marks at the United States Federal level. Presently, Petitioner is the owner of the following U.S. Federally Registered trademarks, among others: No.

2,579,706 for the mark TART; 2,650,009 for the mark LEMON TART; 4,064,083 for the mark TART; No. 4,229,470 for the mark TART NOIR; No 4,655,936 for TART COLLECTIONS; and No. 4,655,980 for TART INTIMATES, as well as Trademark Applications: Serial No. 86267570 for the mark TART SWIM; No. 86555299 for the mark TART COLLECTIONS MATERNITY; and 86555294 for the mark TART MATERNITY. Petitioner's above referenced clothing accessories and retail service registrations are collectively referred to herein as the "TART Marks."

4. Petitioner has been using said marks since at least February, 2000 and has been using said marks in interstate commerce since at least February, 2000 and has been using the mark TART SWIM in commerce since June, 2013.

5. In addition, as a result of Petitioner's efforts through advertising, promotions, sales, and customer service, as well as favorable recommendations by Petitioner's customers, Petitioner's TART products have achieved enormous popularity among the public. As a result of these efforts and Petitioner's exclusive use of the TART Marks, the TART Marks

have acquired substantial goodwill and secondary meaning for a long period of time, serving as an indicator of Petitioner as the source of origin of its products.

6. By virtue of the TART Marks' inherent distinctiveness and acquired secondary meaning; the long duration and international usage exclusively by Petitioner of the TART Marks for clothing, accessories, and related products and online retail services; Petitioner's extensive advertising and publicity of the TART Marks; and the extremely high degree of recognition of the mark in the trading areas and channels of trade used by Petitioner; the TART Marks, and each of them, are famous under 15 U.S.C. § 1125(c)(1) of the Federal Trademark Dilution Act of 1995.

7. Petitioner is informed and believes, and on such basis alleges, that Registrant markets and sells swimwear under the name SWIMTARTE and advertises these goods online at swimtarte.com and began use and registration well after Petitioner's Tart Marks became famous.

8. Registrant has no right, license or other authority from Petitioner to use any of the SWIMTARTE Marks or confusingly similar marks thereto for any purpose.

9. Registrant knew of the TART Marks and that the same were owned by someone other than herself; knew that the TART Marks were distinctive and famous; and knew that Registrant had not received any authority from Petitioner to use the TART Marks or any other marks confusingly similar thereto, for any purposes because Petitioner send a cease and desist demand to Registrant after she had filed an Intent-To-Use Application on July 22, 2013 for SWIMTARTE, Serial No. 86016013.

10. Petitioner is also informed and believes that Registrant has committed fraud upon the trademark office by claiming a first use date prior to her Intent-To-Use filing date when the mark was not yet in use in commerce for the goods. Petitioner is further informed and believes that Registrant committed fraud upon the trademark office by submitting samples of use that were not yet in use in commerce prior to the January 5, 2015 Statement of Use filing date but falsely claimed under oath that these specimens were in use at least as early as the Statement of Use filing date, when in fact the samples were created after the ITU Office Action rejection of prior samples of use that did not match the drawing in the Application.

6. Petitioner is informed and believes that Registrant committed fraud on the U.S. Trademark Office and filed and began use of its infringing and confusingly similar SWIMTARTE mark well after Petitioner's marks became famous, both warranting cancellation of Registration No. 4760861.

WHEREFORE, Petitioner deems that it will be damaged by Registration No. 4760861 and respectfully request that the registration of Registrant's mark under the above-identified registration be canceled.

Respectfully submitted,

By: /Michael P. Martin/

Dated: August 8, 2015

Michael P. Martin

Attorneys for Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2015, I served a true and correct copy of the above and foregoing **FIRST AMENDED PETITION FOR CANCELLATION** on:

ALEXIS MEREDITH SPARLING
313 Clinton Avenue #3
Brooklyn, NY 11205

by depositing a copy thereof in the United States Mail, first class, postage prepaid.

FISCHBACH, PERLSTEIN, LIEBERMAN & ALMOND LLP

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