

ESTTA Tracking number: **ESTTA697422**

Filing date: **09/22/2015**

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

Proceeding	92062032
Party	Plaintiff Brachstar Enterprises, LLC dba Superfun Yoga Pants
Correspondence Address	ROBERT M TYLER SPOTTS FAIN PC 411 EAST FRANKLIN STREET, SUITE 600 RICHMOND, VA 23219 UNITED STATES trademarks@spottsfain.com
Submission	Other Motions/Papers
Filer's Name	Dana D. McDaniel
Filer's e-mail	dmcdaniel@spottsfain.com, trademarks@spottsfain.com
Signature	/Dana D. McDaniel/
Date	09/22/2015
Attachments	Notice of Non-Delivery of Service Copy.pdf(31084 bytes ) Exhibit A.pdf(422622 bytes ) Exhibit B.pdf(1127116 bytes )



This Notice is filed within ten days of counsel's receipt of the returned Service Copy.

Respectfully submitted,

**BRACHSTAR ENTERPRISES, LLC**

/Dana D. McDaniel/  
Dana D. McDaniel Spotts Fain PC  
411 East Franklin Street Suite 600  
Richmond, Virginia 23219  
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Email: trademarks@spottsfain.com  
Counsel for Brachstar Enterprises, LLC

**CERTIFICATE OF SERVICE**

I certify that on September 22, 2015, a true copy of the foregoing Notice of Non-Delivery of Service Copy of Petition to Cancel was sent by certified mail, return receipt requested, to Lock & Key Goods, LLC, 1840 N. Damen Avenue, Ste 1-S, Chicago, IL 60647.

/Dana D. McDaniel/

# **EXHIBIT A**

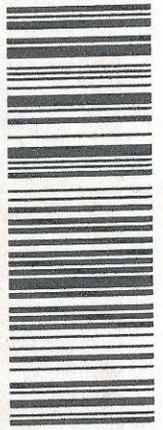
## **Verification of Non-Delivery**

ZIP 23219 \$0  
02 1W  
0001401951 AUG

*fnk*  
*8.18.15*

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

**CERTIFIED MAIL™**



7010 3090 0000 6692 7488

**SPOTTS FAIN**  
A PROFESSIONAL CORPORATION  
ATTORNEYS & COUNSELORS AT LAW

P.O. BOX 1555  
RICHMOND, VIRGINIA 23218-1555

*9-17*

TO:



Lock & Key Goods, LLC

605473014-1N 260 09/11/15

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RETURN TO SENDER  
UNCLAIMED  
UNABLE TO FORWARD  
RETURN TO SENDER



PS Form 3811, July 2013

7010 3090 0000 6692 7488

1. Article Addressed to: *Lock & Key Goods, LLC  
1840 N. Damen Avenue  
Ste 1-S  
Chicago, IL 60647*

2. Attach this card to the back of the envelope, or on the front if space permits.

3. Service Type  
 Certified Mail®  
 Priority Mail Express™  
 Registered Mail  
 Insured Mail

4. Restricted Delivery? (Extra Fee)  
 Yes  
 No

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

# **EXHIBIT B**

## **Returned Service Copy**

**SPOTTS FAIN**  
A PROFESSIONAL CORPORATION  
ATTORNEYS & COUNSELORS AT LAW

**ROBERT M. TYLER**

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RTYLER@SPOTTSFAIN.COM

August 14, 2015

MAILING ADDRESS

POST OFFICE BOX 1555

RICHMOND, VIRGINIA 23218-1555

**By Certified Mail  
Return Receipt Requested**

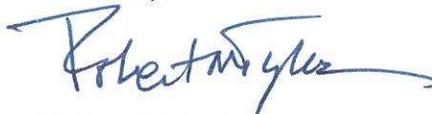
Lock & Key Goods, LLC  
1840 N. Damen Avenue  
Ste 1-S  
Chicago, IL 60647

**Re: Petition to Cancel**

To Whom It May Concern:

Enclosed is a service copy of a Petition to Cancel U.S. Registration No. 3993694, which was filed today with the United States Patent and Trademark Office's Trademark Trial and Appeal Board.

Sincerely,



Robert M. Tyler

RMT/

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

**In re Registration of:**        **LOCK & KEY GOODS, LLC**  
**Reg. No.:**                    **3993694**  
**Reg. Date:**                 **July 12, 2011**  
**Mark:**                         **SUPERFUN**

<b>BRACHSTAR ENTERPRISES, LLC</b>	)	
<b>dba Superfun Yoga Pants</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Cancellation No.</b>
	)	
<b>LOCK &amp; KEY GOODS, LLC</b>	)	
	)	
<b>Registrant.</b>	)	

**PETITION TO CANCEL**

Brachstar Enterprises, LLC dba Superfun Yoga Pants (“Petitioner”), a limited liability company duly organized and existing under the laws of the Commonwealth of Virginia, with a mailing address at 4810 Kensington Avenue, Richmond, Virginia 23236, believes that it is being damaged by registration of the mark shown in Registration No. 3993694 and petitions to cancel the same under Section 14 of the Trademark Act of July 5, 1946, 15 U.S.C. § 1064.

As grounds of cancellation, Petitioner alleges that:

1.        Registrant Lock & Key Goods, LLC (“Registrant”) was a limited liability company organized and existing under the laws of the State of Illinois.
2.        On July 12, 2011, Registrant registered the mark SUPERFUN, bearing Registration No. 3993694, for “Sweatshirts; T-shirts; Wearable garments and clothing, namely,

shirts” in International Class 25 and “promoting the parties and special events of others” in International Class 35 (“Registrant’s Mark”).

3. Petitioner engages in the sale of exercise pants, also known as yoga pants.

4. On March 29, 2015, Petitioner filed Application Serial No. 86580183 for the trademark SUPERFUN YOGA PANTS used in connection with retail and online retail store services featuring apparel, namely, yoga pants, in International Class 35.

5. On March 29, 2015, Petitioner filed Application Serial No. 86580190 for the trademark shown below used in connection with retail and online retail store services featuring apparel, namely, yoga pants, in International Class 35.



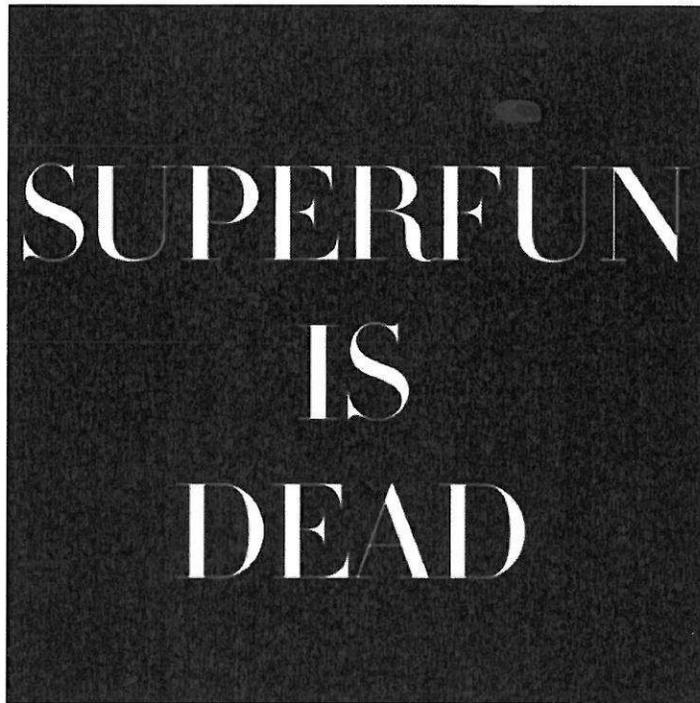
(Together with SUPERFUN YOGA PANTS, “Petitioner’s Marks”).

6. On July 2, 2015, the Examining Attorney cited Registrant’s Mark as a basis for denying registration of Petitioner’s Marks.

7. From 2009 to 2012, Registrant staged parties under Registrant’s Mark on Wednesday nights at the JBar club at the James Hotel in Chicago. The last such event took place on November 29, 2012.

8. Upon information and belief, Registrant has conducted no activities under Registrant’s Mark since that point. Indeed, two of Registrant’s last entries on its Tumblr page proclaimed “Superfun is dead.”

November 29, 2012



See <http://superfunparty.tumblr.com/>.

9. Other social media accounts used by Registrant, included the Twitter handle @superfunparty and its Facebook presence, have been deactivated.
10. Moreover, the website formerly used by Registrant -- [www.atsuperfun.com](http://www.atsuperfun.com) -- is now owned and used by a Japanese registrant bearing no relation to Registrant or Registrant's Mark.
11. Registrant no longer exists as a legal entity, having been involuntarily administratively dissolved by the State of Illinois on April 11, 2014.
12. From these facts, it can be inferred reasonably, and Registrant affirmatively alleges that, Registrant has abandoned Registrant's Mark by discontinuing use of Registrant's Mark without intent to resume use.
13. A registered trademark may be cancelled if it has been abandoned.

14. Under these circumstances, if Registrant is permitted to retain its registration, and thereby at least a *prima facie* exclusive right to use of the Registrant's Mark, the registration would continue to damage Petitioner.

WHEREFORE, Petitioner prays that its petition be granted and that Registration No. 3993694 be cancelled.

Respectfully submitted,

BRACHSTAR ENTERPRISES, LLC

/Robert M. Tyler/

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trademarks@spottsfain.com

Counsel for Brachstar Enterprises, LLC

CERTIFICATE OF SERVICE

I certify that on August 14, 2015, a true copy of the foregoing document was sent by certified mail, return receipt requested, to Lock & Key Goods, LLC, 1840 N. Damen Avenue, Ste 1-S, Chicago, IL 60647.

/Robert M. Tyler/