

ESTTA Tracking number: **ESTTA615817**

Filing date: **07/15/2014**

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

Proceeding	77367998
Applicant	Dillard's Inc.
Applied for Mark	THE MADISON AVE FIT
Correspondence Address	SIMOR L MOSKOWITZ WESTERMAN HATTORI DANIELS & ADRIAN 1250 CONNECTICUT AVENUE NW, SUITE 700 WASHINGTON, DC 20036 UNITED STATES smoskowitz@whda.com,trademark@whda.com
Submission	Applicant's Motion to Suspend
Attachments	Motion to Suspend Appeal.pdf(158529 bytes )
Filer's Name	Simor L. Moskowitz
Filer's e-mail	trademarkmail@WHDA.com,smoskowitz@whda.com
Signature	/Simor L. Moskowitz/
Date	07/15/2014

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

In re the application of: )  
 )  
Dillard's, Inc. )  
 )  
Serial No.: 77/367998 )  
 )  
Filed: January 9, 2009 )  
 )  
Mark: the MADISON AVE fit )

**MOTION TO SUSPEND APPEAL**

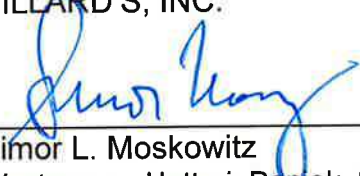
Applicant, through its undersigned counsel, hereby requests that the appeal in the above application and the deadline for Applicant to file its Brief on appeal be suspended pending the outcome of the Petition for Cancellation (copy attached) filed this date against Reg. No. 3900895, which is the registration on which the final Section 2(d) rejection appealed from herein is based.

In view of the foregoing, Applicant respectfully requests that this Motion be granted, and that the appeal be suspended.

Respectfully submitted,

DILLARD'S, INC.

By:

  
\_\_\_\_\_

Simor L. Moskowitz  
Westerman, Hattori, Daniels & Adrian, LLP  
1250 Connecticut Ave., N.W., Suite 700  
Washington, D.C. 20036  
(202) 822-1100  
Attorneys for Applicant

Dated: July 15, 2014  
Atty Docket No.: 13913693TMOPP

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

Dillard's, Inc. )  
)  
Petitioner, )  
)  
v. ) **Cancellation No.:**  
)  
NIHC, Inc. )  
)  
Respondent. )

**PETITION FOR CANCELLATION**

Petitioner, Dillard's, Inc. ("Dillard's"), a corporation organized and existing under the laws of Delaware, located and doing business at 1600 Cantrell Road, Little Rock, AK 72203, believes that it is or will be damaged by Registration No. 3900895 issued January 4, 2011, on the Principal Register for the trademark **MADISON AVENUE FIT** in connection with "pants" in Class 25. Petitioner hereby petitions to cancel said registration.

As grounds for the Petition, it is alleged that:

(1) Petitioner is a Delaware corporation, located and doing business at 1600 Cantrell Road, Little Rock, AK 72203.

(2) Petitioner has adopted and used the trademark the **MADISON AVE** fit in connection with "pants, capris, crop tops, pedal pushers, skirts, shorts and skorts" in Class 25; and, on January 9, 2008, Petitioner filed an application for U.S. registration therefor, Serial No. 77/367998 ("Petitioner's Application").

(3) On January 4, 2011, trademark Registration No. 3900895 was issued to Nordstrom, Inc. for the trademark **MADISION AVENUE FIT** in connection with "pants" in Class 25; and said registration purportedly was assigned to Respondent on March 28, 2011.

(4) On November 10, 2011, the Trademark Examining Attorney in Petitioner's Application issued a Final Office Action refusing registration to Petitioner under Section 2(d) of the Trademark Act based upon the subject Registration, No. 3900895, on the grounds that "*Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3900895. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq...*".

(5) Commencing prior to the August 1, 2007 date of first use alleged in the registration sought to be cancelled herein, Petitioner continuously has, and is now, engaged in the marketing, advertising, promotion, and sale of various articles of clothing in commerce under

and in connection with Petitioner's the **MADISON AVE** fit mark. Thus, to the extent that there exists a likelihood of confusion between Petitioner's the **MADISON AVE** fit mark of Petitioner's Application and Respondent's **MADISION AVENUE FIT** mark of Registration No. 3900895, Petitioner enjoys priority in its mark *vis a vis* Respondent in its mark.

(6) Since its initial use of Petitioner's the **MADISON AVE** fit mark, Petitioner has used, advertised, marketed and offered its the **MADISON AVE** fit clothing in commerce to the public, with the result that Petitioner's customers and the public in general have come to know and recognize Petitioner's the **MADISON AVE** fit mark and associate the mark with Petitioner and/or the clothing marketed, offered, and sold by Petitioner

(9) By virtue of the foregoing, if Respondent retains such rights as are conferred under the Principal Register of the Trademark Act of 1946, Petitioner will be subject to great and irreparable damage in that it will be unable to federally register its the **MADISON AVE** fit mark, and Respondent will enjoy an advantage to which it is not entitled under the Trademark Act of 1946.

WHEREFORE, Petitioner, Dillard's, Inc. believes and avers that it is being and will continue to be damaged by the continued registration of the trademark **MADISION AVENUE FIT** as aforesaid, and prays that the Trademark Trial and Appeal Board issue a judgment

- (a) Sustaining the petition for cancellation and rendering judgment for Petitioner;
- (b) Ordering that Registration No. 3900895 be cancelled forthwith; and
- (c) For such other and further relief as is deemed appropriate.

Respectfully submitted,

Dillard's, Inc.

By: 

Simor L. Moskowitz  
Westerman, Hattori, Daniels & Adrian, LLP  
1250 Connecticut Avenue, NW Suite 700  
Washington, DC 20036  
(202) 822-1100  
(202) 822-1111 (fax)  
[smoskowitz@whda.com](mailto:smoskowitz@whda.com), [trademarkmail@whda.com](mailto:trademarkmail@whda.com)  
Attorneys for Petitioner

Dated: July 15, 2014  
Atty. Dkt. No.: 13913693TMOPP

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Petition for Cancellation was served via first class mail, postage upon Registrant at its address of record:

NIHC, Inc.  
701 Southwest Broadway  
4<sup>th</sup> Floor  
Portland, OR 97205

and its attorney of record:

William O. Ferron, Jr.  
Seed IP Law Group PLLC  
Suite 5400  
701 Fifth Avenue  
Seattle, WA 98104

this 15th day of July, 2014.

A handwritten signature in blue ink is written over a solid horizontal line. The signature is cursive and appears to read "William O. Ferron, Jr.".