

TTAB

In the United States Patent and Trademark Office Before the Trademark Trial and Appeal Board

PEI Licensing, Inc.,  
Petitioner,

v.

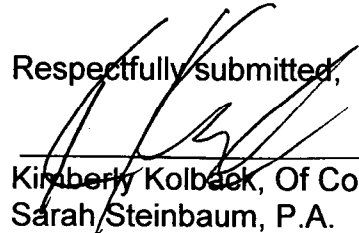
Cancellation No. 92042224  
Registration No. 2,724,293  
Mark: PENITENTIARY PENGUIN

C. L. Swanson Corporation,  
Registrant.

**NOTICE OF FILING AFFIDAVIT IN SUPPORT OF NOTICE OF DISMISSAL**

Petitioner, PEI LICENSING, INC., by and through its undersigned attorney, hereby gives notice of filing the affidavit of Michael Swanson in support of Petitioner's Notice of Dismissal.

Respectfully submitted,



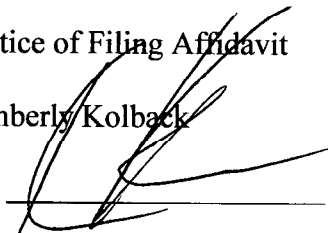
Kimberly Kolback, Of Counsel  
Sarah Steinbaum, P.A.  
Counsel for Petitioner, PEI Licensing, Inc.  
44 West Flagler Street, Suite 2175  
Miami, FL 33130

**CERTIFICATE OF SERVICE AND MAILING**

I HEREBY CERTIFY that the document named below is being served and deposited on December 21st, 2004 with the U.S. Mail, with sufficient pre-paid postage, in an envelope addressed to: Assistant Commissioner for Trademarks, BOX T.T.A.B.-NO FEE, 2900 Crystal Drive, Arlington VA 22201-3513 and counsel of record for Registrant, Anthony Tomaselli, Quarles & Brady, One South Pinckney Street, Post Office Box 2113, Madison, Wisconsin 53701-2113.

Name of Document: Notice of Filing Affidavit

Name of Depositor: Kimberly Kolback

Signature of Depositor: 

Dated: December 21st, 2004



01-04-2005

U.S. Patent & TMO/c/TM Mail RcptDt. #74



and the American Correctional Association Show, and to correctional facilities and commissaries.

7. I am not aware of any past or present mistakes or confusion between Swanson's PENITENTIARY PENGUIN mark and any other trademarks. In particular, I am not aware of any past or present mistakes or confusion between Swanson's PENITENTIARY PENGUIN mark in relation to any penguin marks owned by Perry Ellis International, Inc. and/or PEI Licensing, Inc.  
FURTHER AFFIANT SAYETH NAUGHT.



MICHAEL SWANSON

The foregoing instrument was acknowledged before me this 15 day of November, 2004, by Michael Swanson, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did take an oath.

IN WITNESS WHEREOF, I have hereunto set my hand and seal in the state and county set forth above as of this 15 day of November, 2004.

  
\_\_\_\_\_  
Notary Public, State of Wisconsin

Eldon L. Zimmerman  
\_\_\_\_\_  
Name of Notary typed, printed or stamped

My Commission expires: 1/29/06

5. On July 15, 2003, PEI Licensing, Inc., a wholly owned subsidiary of Perry Ellis International, Inc. filed Petition For Cancellation No. 92042224 with the U.S. Patent and Trademark Office seeking the cancellation of Registration No. 2,724,293 for the word trademark PENITENTIARY PENGUIN.

6. Since the filing of Cancellation No. 92042224, the parties have conducted discovery in relation to the parties' use of their respective marks. This discovery has revealed that:

- A. Swanson has been using its PENITENTIARY PENGUIN mark on shirts, t-shirts and sweaters, stuffed animals, plush toys, action figures and play figures (hereinafter the "Swanson Goods") since April 2001.
- B. Since the commencement of Swanson's use of the PENITENTIARY PENGUIN mark, Swanson has used its name "Swanson" in conjunction with the words PENITENTIARY PENGUIN on Swanson Goods. Further, Swanson has display a stylized penguin design in close proximity and in conjunction with the words PENITENTIARY PENGUIN on Swanson Goods. Further, this stylized penguin consists of a beaked bird wearing a prison style stripped shirt and cap.
- C. Swanson markets and sells Swanson Goods at trade shows such as the American Jail Association Show, the National Sheriff's Association Show