

TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: November 2, 2005

Cancellation No. 92044670

Danica Racing, Inc. 72, 242, 461

v.

PHILLIPS-VAN HEUSEN
CORPORATION

Angela Campbell, Paralegal Specialist:

The notice instituting this proceeding and a copy of the petition to cancel were forwarded to registrant but were returned by the Postal Service as undeliverable.

This Office has since ascertained a more recent registrant as follows: PHILLIPS-VAN HEUSEN CORPORATION, 1290 AVENUE OF THE AMERICAS, NEW YORK, NY 10104.

Accordingly, the above notice, with enclosure, is remailed as indicated above.

Registrant is allowed until forty days from the mailing date of this order in which to inform this Office of its correct address in order that all records may be amended. Compliance with Trademark Rule 2.193(b) and Trademark 2.119(a) is required.



11-22-2005

U.S. Patent & TMO/TM Mail Rpt Dt. #11

If there has been any transfer of interest in the involved registration, registrant must so advise the Board and registrant must submit copies of the appropriate documents. See Section 10 of the Trademark Act and Patent and Trademark Rules 3.71 and 3.73.

In view of the circumstances, the time for filing an answer to the petition to cancel is extended to forty days from the mailing date of this order. Any discovery requests or notices served that remain unanswered as of the mailing date of this order must be reserved in accordance with the rules, unless otherwise agreed to by the parties.

In accordance with the Trademark Rules of Practice, discovery is open, and the close of discovery and testimony dates are set as indicated below. In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Discovery period to close: May 2, 2006

30-day testimony period for party
in position of plaintiff to close: July 31, 2006

30-day testimony period for party
in position of defendant to close: September 29, 2006

15-day rebuttal testimony period
to close: November 13, 2006

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

TTAB

UNITED STATES PATENT AND TRADEMARK
OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: June 24, 2005

PALM BEACH COMPANY

400 PIKE ST.
CINCINNATI, OH 45201

Cancellation No. 92044670
Reg. No. 834500

ROSANNE T. YANG
BAKER & HOSTETLER, LLP
65 EAST STATE STREET, STE. 2100
COLUMBUS, OH 43215-4260

Danica Racing, Inc.

V.

PALM BEACH COMPANY

Duion L. Walker, Legal Assistant

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12,



07-08-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open: **July 14, 2005**

Discovery period to close: **January 10, 2006**

30-day testimony period for party
in position of plaintiff to close: **April 10, 2006**

30-day testimony period for party
in position of defendant to close: **June 09, 2006**

15-day rebuttal testimony period
for plaintiff to close: **July 24, 2006**

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the

Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

ESTTA Tracking number: **ESTTA36633**

Filing date: **06/23/2005**

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	Danica Racing, Inc.		
Entity	Corporation	Citizenship	Illinois
Address	9925 N. Alpine Road Machesney Park, IL 61115 UNITED STATES		

Attorney information	Rosanne T. Yang Baker & Hostetler LLP 65 E. State Street, Ste. 2100 Columbus, OH 43215 UNITED STATES columbusip@bakerlaw.com Phone:614-462-2684		
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Registration Subject to Cancellation

Registration No	834500	Registration date	08/29/1967
Registrant	PALM BEACH COMPANY 400 PIKE ST. CINCINNATI, OH 45201 UNITED STATES		
Goods/Services Subject to Cancellation	Class U039 (International Class 025). First Use: 19660301, First Use In Commerce: 19660301 Goods/Services: MISSES AND JUNIOR DRESSES		
Grounds for	The registered mark has been abandoned.		

Cancellation	
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Attachments	DANIKACancelPet.pdf (3 pages)
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Signature	/ttabdnkrty/
Name	Rosanne T. Yang
Date	06/23/2005

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

In the matter of U.S. Registration No. 834500,
issued on the Supplemental Register on March 15, 1967
with Registration Date of August 29, 1967

DANICA RACING, INC.,)	
)	
Petitioner,)	
)	Cancellation No.:
v.)	
)	
PHILLIPS-VAN HEUSEN CORPORATION,)	
)	
Registrant.)	
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PETITION FOR CANCELLATION

Petitioner, DANICA RACING, INC., a corporation organized under the laws of the State of Illinois, having its principal place of business at 9925 N. Alpine Road, Machesney Park, Illinois 61115, believes that it is or will be damaged by U.S. Trademark Registration No. 834500 issued on the Supplemental Register on March 15, 1967, and registered August 29, 1967, to Litt-Gluck Company, its principal place of business and state of organization unknown, for the mark DANIKA in connection with "misses and junior dresses" in International Class 25.

Petitioner seeks cancellation of U.S. Trademark Registration No. 834500 on the grounds that:

1. Petitioner is the owner of three (3) U.S. trademark/service mark applications for the mark DANICA, namely,
 - a. Serial No. 78/653384 in Class 25 in connection with "t-shirts, tank tops, shirts, polo shirts, sweatshirts, pants, sweatpants, shorts, jumpsuits, socks, gloves, wristbands, jackets, coats, hats, headwear and footwear for men, women and children";
 - b. Serial No. 78/653441 in Classes 9, 16 and 28 in connection with "computer games, computer backgrounds and screensaver software, helmets, sunglasses,

cases for sunglasses” in Class 9, “address books, calendars, binders, bumper stickers, erasers, folders, greeting cards, memo pads, notebooks, paper pennants, pens, pencils, pencil boxes and cases, photographs, posters, trading cards, writing paper and envelopes” in Class 16, and “mechanical toys, miniature toy helmets, radio-controlled vehicles, toy model cars, toy vehicles, and toy figurines and accessories therefor” in Class 28; and,

c. Serial No. 78/653322 in Class 41 in connection with “sports and entertainment services in the nature of conducting, sponsoring and participating in automobile races.”

2. On information and belief, on February 21, 1968, Litt-Gluck Inc., a New York corporation, with its principal place of business at 111 W. 19th Street, New York, New York, acquired U.S. Trademark Reg. No. 834500 by assignment from Litt-Gluck Co.

3. On information and belief, on February 7, 1977, Evan-Picone, Inc., a New Jersey corporation doing business at 28 State Street, Boston, Massachusetts 02109, acquired U.S. Reg. No. 834500 by assignment from Craig Craely, Inc., a New York corporation, formerly known as Litt-Gluck, Inc., a New York corporation.

4. On information and belief, on September 14, 1981, Palm Beach Company, a Maine corporation, doing business at 400 Pike Street, Cincinnati, Ohio 45201, as a result of a merger with Evan-Picone, Inc., acquired by assignment U.S. Trademark Reg. No. 834500.

5. On information and belief, Palm Beach Company changed its name to Crystal Apparel, Inc., a Maine corporation, doing business at Crystal Brands Road, Southport, Connecticut 06490, and Registration No. 834500 was thereupon assigned to Crystal Apparel, Inc. on March 3, 1993.

6. On information and belief, Phillips-Van Heusen Corporation, a Delaware corporation (hereinafter “Registrant”), with its principal place of business at 1290 Avenue of The

Americas, New York, New York 10104, acquired U.S. Trademark Registration No. 834500 by assignment from Crystal Apparel, Inc. on May 17, 1995.

7. Registrant's trademark registration is likely to be cited as a bar to registration of one or more of Petitioner's U.S. Trademark/Service Mark Applications, namely, Serial No. 78/653384, Serial No. 78/653441, and Serial No. 78/653322.

8. Upon information and belief, Registrant has abandoned the DANIKA trademark that is the subject of U.S. Trademark Registration No. 834500 by not using the mark for at least three (3) years without an intention to resume use.

9. By virtue of the foregoing, if Registrant retains such rights as conferred under the Supplemental Registration of the Trademark Act of 1946, Petitioner will be subjected to great and irreparable damage, and Registrant will enjoy unlawful gain and advantage to which it is not entitled under the Trademark Act of 1946.

10. The fee required in Section 2.6(a)(16) is submitted herewith.

WHEREFORE, Petitioner DANICA RACING, INC. believes and avers that it is being, and will continue to be, damaged by the continued registration of the DANIKA trademark as aforesaid and prays that said Registration No. 834500 be canceled.

Respectfully submitted,

/Rosanne T. Yang/
Rosanne T. Yang, Esq.
BAKER & HOSTETLER LLP
Capital Square, Suite 2100
65 East State Street
Columbus, OH 43215-4260
Tel: 614.462.2684
Fax: 614.462.2616
Email: ryang@bakerlaw.com
ATTORNEYS FOR PETITIONER

United States Patent and Trademark Office
Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

if Undeliverable Return in Ten Days

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE, \$300

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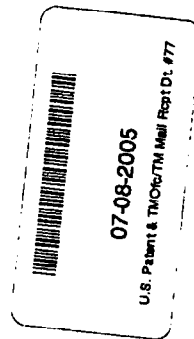
92044670 PALM BEACH COMPANY

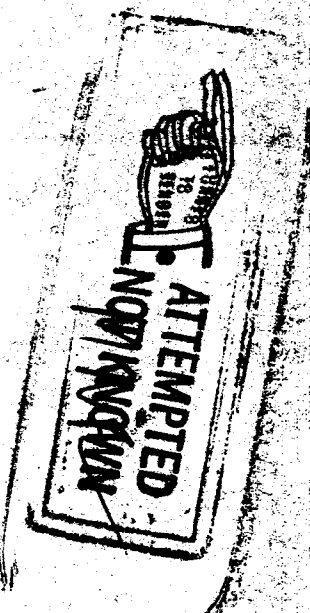
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ADDRESSEE FOR FORWARDING
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AND CITY/STATE
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92044670
PHILLIPS-VAN HEUSEN CORPORATION
1290 AVENUE OF THE AMERICAS
NEW YORK, NY 10104

