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Filing date: **06/02/2006**

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 | Chefwear, Inc. | | |
| Entity | Corporation | Citizenship | Oregon |
| Address | 3111 N. Knox Chicago, IL 60641 UNITED STATES | | |

| | |
|----------------------|--|
| Attorney information | Brett A. August Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP 311 S. Wacker Drive Suite 5000 Chicago, IL 60606 UNITED STATES BAA@pattishall.com, TDT@pattishall.com Phone:312-554-8000 |
|----------------------|--|

Registration Subject to Cancellation

| | | | |
|--|---|-------------------|------------|
| Registration No | 2389913 | Registration date | 09/26/2000 |
| Registrant | Pierce Sales Co., Inc. 2413 Forsyth Rd. Orlando, FL 32807 UNITED STATES | | |
| Goods/Services Subject to Cancellation | Class 035. First Use: 1999/10/24 , First Use In Commerce: 1999/10/24 Goods/Services: Distributorship services involving clothing and accessories for chefs | | |
| Grounds for Cancellation | The registered mark has been abandoned. | | |

| |
|-------------|
| Attachments |
|-------------|

| |
|-----------|
| Signature |
| Name |
| Date |

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

In the matter of Registration No. 2,389,913

CHEF WEAR WORLD

Date registered: September 26, 2000

CHEFWEAR, INC.,)
)
 Petitioner,)
)
 v.)
)
 PIERCE SALES CO., INC.)
)
 Registrant.)

Cancellation No. _____

PETITION FOR CANCELLATION

Chefwear, Inc., an Oregon corporation located and doing business at 3111 N. Knox, Chicago, Illinois 60641, believes it is and will continue to be damaged by the maintenance of Reg. No. 2,389,913 on the Principal Register and hereby petitions to cancel the same.

As grounds for cancellation, petitioner alleges:

1. Petitioner owns and uses a family of CHEFWEAR marks, including CHEFWEAR, CHEFWEAR and Toque Design, CHEFWEARUSA, CHEFWEAR DU JOUR and CHEFDRY BY CHEFWEAR.

2. Since at least as early as November 1991, petitioner has used the trademark CHEFWEAR in connection with "mail order catalog services featuring clothing for food preparation staff," and "clothing for restaurant food preparation staff; namely, shirts, pants, tunics, jackets, aprons, shorts, scarves and hats," and "handkerchiefs, pot holders, kitchen towels, napkins and table cloths."

3. Since at least as early as November 1991, petitioner also has used the trademark CHEFWEARUSA in connection with "mail order catalog services featuring clothing for food preparation staff."

4. Petitioner now sells, and in the past has sold, many millions of dollars worth of clothing and accessories for restaurant food preparation staff annually via mail order catalog under its CHEFWEAR and CHEFWEARUSA marks.

5. Petitioner now spends, and in the past has spent, substantial sums of money advertising and promoting its CHEFWEAR goods and its CHEFWEAR and CHEFWEARUSA catalog services.

6. By virtue of petitioner's aforesaid extensive sales, advertising and promotion, its CHEFWEAR and CHEFWEARUSA marks have become well-known in connection with clothing and accessories for restaurant food preparation staff as well as mail order catalog services for those goods, and petitioner now owns valuable goodwill symbolized by those marks.

7. Registrant's application for CHEF WEAR WORLD that matured into Reg. No. 2,389,913 was filed November 3, 1999, and claimed a first use in commerce date of October 24, 1999, long after petitioner had begun using its CHEFWEAR marks. It is registered for services that complete directly with petitioner, namely "distributorship services involving clothing and accessories for chefs."

8. On information and belief, registrant does not use and has never used the mark CHEF WEAR WORLD in commerce for the services identified in Reg. No. 2,389,913.

9. On information and belief, registrant does not intend to begin such use.

Count I: Abandonment

10. Petitioner repeats and realleges Paragraphs 1-9 as though fully set forth herein.

11. Registrant has abandoned the CHEF WEAR WORLD mark for the services identified in Reg. No. 2,389,913.

12. Registrant's CHEF WEAR WORLD trademark registration is injurious to petitioner because it casts a cloud on petitioner's exclusive right to use its family of CHEFWEAR marks. Registration No. 2,389,913 should therefore be cancelled.

Count II: Fraud

13. Petitioner repeats and realleges Paragraphs 1-9 as though fully set forth herein.

14. On information and belief, registrant obtained its registration for CHEF WEAR WORLD fraudulently, in violation of 15 U.S.C. §1051(a)(3)(D).

15. On information and belief, at the time registrant applied to register the CHEF WEAR WORLD mark, registrant falsely declared that to the best of its knowledge and belief no other person, firm, corporation or association had the right to use the mark in commerce, either in identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive.

16. On information and belief, such declaration was false because registrant knew of petitioner's right to use its CHEFWEAR and CHEFWEARUSA marks in commerce.

17. On information and belief, registrant obtained its registration for CHEF WEAR WORLD fraudulently, in violation of 15 U.S.C. §1051(a)(3)(C).

18. On information and belief, at the time registrant applied to register the CHEF WEAR WORLD mark, registrant falsely specified that the mark was in use in commerce.

19. On information and belief, such specification was false because the specimen submitted with registrant's application does not show use of the CHEF WEAR WORLD mark in commerce. A copy of the specimen is attached hereto as Exhibit A. On information and belief,

such specification also was false because registrant never has used the CHEF WEAR WORLD mark in commerce. It is apparent from the face of registrant's purported specimen of use that it is merely an internal computer file that was printed from the hard drive (or "C" drive) of registrant's computer.

20. Registrant's registration for CHEF WEAR WORLD is injurious to petitioner because it casts a cloud on petitioner's exclusive right to use its family of CHEFWEAR marks.


WHEREFORE, petitioner prays that Registration No. 2,389,913 be cancelled.

Payment of \$300.00 is included. Please charge any shortfall, excess or missing fees to Deposit Account no. 16-0650.

Please address all correspondence to Brett A. August, Esq., Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, 311 South Wacker Drive, Suite 5000, Chicago, Illinois 60606.

Respectfully submitted,

PATTISHALL, McAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP

By: 
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Attorneys for Petitioner, Chefwear, Inc.

Exhibit

A



Chef Wear WorldSM

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