

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

TTAB

Dunham's Athleisure Corporation )  
Petitioner, )  
v. )  
New Balance Athletic Shoe, Inc. )  
Registrant. )

Cancellation No. 92046260



10-10-2006

U.S. Patent & TMOfr/TM Mail Rcp'Dt. #

Certificate of First Class Mailing (37 CFR 1.8(a))

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks P.O. Box 1451, Alexandria, VA 22313-1451, on the date set forth below.

October 3, 2006

Date of Signature and of Mail Deposit

By:

Thomas V. Smurzynski

Thomas V. Smurzynski  
Reg. No. 24,798  
Attorney for Registrant

ANSWER

Registrant, New Balance Athletic Shoe, Inc., hereby answers the Petition for Cancellation as follows:

1. Registrant admits the allegations of paragraph 1 of the Petition.
2. Registrant admits the allegations of paragraph 2 of the Petition.
3. Registrant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 3 of the Petition, and therefore denies them.
4. Registrant admits the allegations of paragraph 4 of the Petition.
5. Registrant admits the allegations of paragraph 5 of the Petition.
6. Registrant admits the allegations of paragraph 6 of the Petition.
7. Registrant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 7 of the Petition, and therefore denies them.

8. Registrant is without knowledge or information sufficient to form a belief as to the allegations of paragraph 8 of the Petition, and therefore denies them.
9. Registrant admits the Registration has been cited. Registrant denies it is a source of injury and damage to Petitioner.
10. Registrant admits that Registration No. 3,016,520 should have been issued on the Supplemental Register.
11. Registrant denies the allegations of paragraph 11 of the Petition.

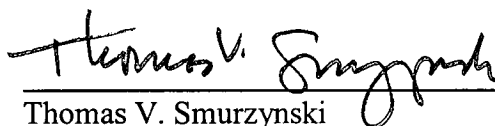
AFFIRMATIVE DEFENSES

12. Registrant is the owner of valid and subsisting trademark registrations no. 740,975; 895,088; and 973,456.
13. The registrations listed in paragraph 12 are for the same or substantially identical mark for the same or substantially identical goods as the registration that is the subject of the Petition.
14. The registrations listed in paragraph 12 were also cited as barriers to Petitioner's applications listed in paragraphs 4, 5 and 6.
15. Petitioner has not petitioned for cancellation of the registrations listed in paragraph 12, and in fact cannot, because the registrations have long existed with the knowledge of Petitioner and without objection for Petitioner.
16. Petitioner cannot be damaged by the registration that is the subject of the Petition where Registrant owns in addition the registrations listed in paragraph 12.

WHEREFORE, Registrant, New Balance Athletic Shoe, Inc., requests that the Petition be dismissed.

LAHIVE & COCKFIELD, LLP

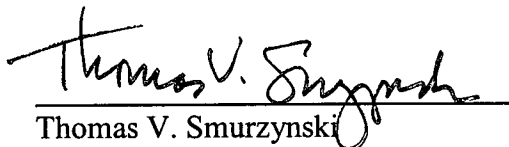
Date: October 3, 2006



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing ANSWER was served by first-class mail, postage prepaid, on Petitioner's counsel, Ronald Nabozny, Esq., Brooks Kushman PC, 1000 Town Center, Southfield, MI 48075, on this 3rd day of October, 2006.

  
Thomas V. Smurzynski