

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

In the matter of Registration No. 3,167,823

LILY CHIN,

Petitioner,

v.

SPINRITE LIMITED PARTNERSHIP.

78/660,089

Cancellation No. _____

PETITION TO CANCEL REGISTRATION

Petitioner **Lily Chin**, by her attorneys Hablutzel & Associates, asks that the registration for the mark "LILY" in Registration No. 3,167,823 be cancelled for the following reasons:

1. Petitioner is legally named Lily Chin; is sole proprietor of Lily Chin LLC, a New York Corporation; and has for several years marketed yarns and threads under the name of "Lily Chin" and "Lily Chin Signature Collection" in the United States, Canada, and other countries.

1. Petitioner may be contacted through her attorneys, Hablutzel & Associates, with an office at 19 South LaSalle Street, Suite #1300, Chicago, Illinois 60603.

2. Respondent **Spinrite Limited Partnership** is a Canadian corporation represented in Registration No. 3,167,823 by the law firm of Torys LLP, 237 Park Avenue, New York, New York 10017-3140.

3. Respondent filed a petition to register the mark "LILY" as a standard character mark without claim to any particular font, style, size, or color, and without representing it as a design mark.

4. In supporting this petition, Respondent alleged itself to be the current owner of a design mark registered in the United States Patent & Trademark Office as Registration No.

08/15/2007 KGIBBONS 00000094 3167823

01 FC:6401

300.00 OP

0237163, covering “Threads and Yarns” in International Class 23 (U.S. Class 43), and which is represented in the registration as follows:

The word "LILY" is written in a bold, black, blocky font. The letters are slightly irregular and have a hand-drawn appearance. The 'L' is on the left, followed by two 'I's, and the 'Y' is on the right. The letters are all the same height and are closely spaced.

5. Respondent also alleged that it has used the word “LILY” in conjunction with yarns and threads since 1927.

6. At the time Respondent made the application to register the word “LILY” for yarns and threads in 2005, two unrelated companies, including Petitioner, used the word “LILY” as the individual or company name for yarns and threads and related materials offered for sale in interstate and international commerce

- a. Noro/KFI sold “LILY” and “LILY MULTI” yarns, a cotton-silk blend produced in solid (“LILY”) and variegated or multi-coloured (“LILY MULTI”) versions.
- b. Petitioner sold several yarns, as well as patterns and related materials, under the “LILY CHIN” brand.
- c. Sales of these yarns continue to the date of filing this Petition to Cancel Registration.

7. Petitioner is the applicant for registration of the word mark “LILY CHIN”, Application No. 78/406008, covering “Knitting yarn and crocheting yarn” in International Class 23 (U.S. Class 43), as well as items in International Class 26 (U.S. Classes 37, 39, 40, 42, and 50). Petitioner’s basis for her application is the fact that “LILY CHIN” is her legal name, which

Petitioner has used in association with knitting and crocheting yarns and other supplies and related items for many years, and which has substantial recognition in the knitting and crocheting communities as indicating Petitioner and the high quality of her work in this field.

8. Petitioner states that based upon her knowledge and belief, Respondent knew or should have known of one or both of the concurrent uses of "LILY" for yarns and threads in 2005 when Respondent filed the application to register its mark.

9. Petitioner acknowledges that Respondent has for many years utilized a design mark which is not registered, despite the fact that Respondent's use of this mark includes the "®" symbol as shown in its specimens to register "LILY", and which consists of a script "Lily" inside a circle. Petitioner acknowledges that Respondent may have developed sufficient recognition in this design mark to achieve registration of such design.

10. However, registration of a mark knowing that it is "a mark or trade name previously used in the United States by another and not abandoned, [and] likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive" the public (Section 2(d) of the Trademark Act, 15 U.S.C. §1052), is not permitted.

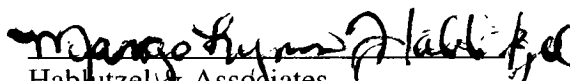
11. By registering a mark "without claim to any particular font, style, size or color," Respondent has removed the ability of other companies to use a mark that they were, at the time of the application, using and continue to use to this day.

12. Petitioner states affirmatively that she will be harmed if Registration No. 3,167,823 is allowed to continue to exist on the Principal Register, and could be a bar against her application to register the "LILY CHIN" mark for "Knitting yarn and crocheting yarn" and other goods as specified in Application No. 78/406008 even though her use of the mark, which is her legal name, in this regard predates the filing of Respondent's application in 2005.

13. Further, Petitioner believes that Respondent only filed the application to register "LILY" after petitioner filed a Cancel Registration against Registration No. 0237163 for the design mark "LILY" based upon abandonment of said mark.

Wherefore, Petitioner asks Registration No. 3,167,823 for the mark "LILY" be cancelled on the grounds that other unrelated companies, including Petitioner's, were selling yarns and threads using the word "LILY" as part of all of the name for such goods at the time the application for registration was filed, contrary to the terms of §2(d) of the Trademark Act, and for such other and further relief as the Trademark Trial and Appeals Board deems appropriate.

Respectfully Submitted


Hablutzel & Associates
Attorneys for Lily Chin, Petitioner

CERTIFICATE OF SERVICE

I, Margo Lynn Hablutzel, an attorney, state that I served a copy of the foregoing Petition to Cancel Registration, upon the attorneys for the respondent at the address below which is the one provided in the file record, although attorney for Petitioner is aware that the named attorneys have left that firm, by First-Class Mail, postage prepaid, on August 9, 2007, the same date on which a copy was served on the Trademark Trial and Appeals Board with full payment of fees.

Attorneys for Respondent:

Louis S. Ederer, Esq.
Elisheva M. Jasie, Esq.
Dorothy C. Alevizatos, Esq.
Sophie B. Anger, Esq.
Torys LLP
237 Park Avenue
New York, New York 10017-3140


Hablutzel & Associates
Attorneys for Lily Chin, Petitioner

Margo Lynn Hablutzel
Hablutzel & Associates
19 South LaSalle Street
Suite #1300
Chicago, Illinois 60603
(312) 220-9140
copyrightlaw@earthlink.net