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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	First Quality Baby Products, LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	80 Cuttermill Road, Suite 500 Great Neck, NY 11021 UNITED STATES		

Attorney information	Kenneth P. George, Esq. AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 Park Avenue New York, NY 10016 UNITED STATES ptodocket@arelaw.com Phone:212-336-8000		
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Registration Subject to Cancellation

Registration No	2782232	Registration date	11/11/2003
Registrant	ABS International Division, S.A. de C.V. Sigma No. 9235 Parque Industrial Mitras Garza Garcia, N.L., 66000 MEXICO		

Goods/Services Subject to Cancellation

<p>Class 016. First Use: 1999/03/00 First Use In Commerce: 1999/03/00 All goods and services in the class are cancelled, namely: Photograph albums; appointment books; art pictures, art prints, graphic art reproductions, paper bath arts for decorative purposes and printed art reproductions; printed awards; paper bags, plastic trash bags, general purpose plastic bags, grocery bags, merchandise bags, plastic bags for disposable diapers, and paper bags for packaging; ball point pens; bank checks; paper blinds; blinders for personal use; blackboards; paperboard blanks; printing blocks; blotters; blueprints; paste board, poster board, art sketching boards, bristol boards, bulletin boards, clipboards, magnetic boards, picture framing mat boards and paper boards; book bindings; blank bookkeeping, partially-printed, printed, business, and accounting forms; booklets and books on the subject of child care; paper boxes, pencil boxes, cardboard boxes, and stationery boxes; bumper stickers; business cards; business forms; business record books; calendar desk stands, desktop document stands, calendar stands, sheet music stands, and desk stands for pens, pencils and ink; calendars; card files; cardboard; announcement cards, blank cards, filing cards, greeting cards, index cards and note cards; cartoon prints and newspaper cartoons; flip chart carrying cases, pen and pencil cases, and playing card cases; cash receipt books; catalogs in the field of child care; paper closures for container; copy books, copy paper, and copyholders; coupons; aquarium covers, book covers, checkbook covers, paint roller covers, and paper covers for telephone receivers; daily planners; data books; directories on the subject of child care; disposable diapers; document files and document holders; envelopes; erasers; paper expanding files; file folders; folders; lettering guides, numbering guides and printed guides on the topic of child care; illustrations; index books; address labels and printing labels not of textiles; printed lectures; letter files; informational letters concerning child care; lithographs and lithographic prints; magazine departments relating to the topic of child care; manuals; negotiable instrument forms; news bulletins; newsletters in the field</p>
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of child care; newspapers; order forms; art pads, calendar desk pads, desk pads, inking pads, note pads, prescription reminder pads, score pads, scratch pads, drawing pads, stamp pads, writing pads, and sandpaper pads for sharpening drawing pencils; adding machine paper, art paper, bond paper, carbon paper, cleaning and polishing paper, computer paper, construction paper, copy paper, corrugated paper, craft paper, crepe paper filler paper, gift wrapping paper, illustration paper, laminated paper, lining paper, loose-leaf paper, newsprint paper, note paper, packing paper, recycled paper, tissue paper, toilet paper, and synthetic paper; mounted and unmounted photographs; printing type; printed survey answer sheets and printed answer sheets on the subject of child care; sheet music, score sheets, instruction sheets on diapers and child care, and sheet books of paper and music; file sorters and memo sorters

Grounds for Cancellation

Torres v. Cantine Torresella S.r.l.Fraud

808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Attachments

Petition for Cancellation - CUTIE BABY.pdf (9 pages)(312351 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Holly Pekowsky/
Name	Holly Pekowsky, Esq.
Date	05/14/2009

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of

Registration No. 2,782,232
of ABS International Division, S.A. de C.V.
for the mark CUTIE BABY
Registered on November 11, 2003

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FIRST QUALITY BABY PRODUCTS, LLC, : Cancellation No.
: :
Petitioner, : **PETITION TO CANCEL**
: :
v. : :
: :
ABS INTERNATIONAL DIVISION, S.A. DE : :
C.V., : :
: :
Registrant. : :
-----x

In the matter of U.S. Trademark Registration No. 2,782,232 registered on the
Principal Register on November 11, 2003 to ABS International Division, S.A. de C.V.
("Registrant") for the mark CUTIE BABY for:

photograph albums; appointment books; art pictures, art
prints, graphic art reproductions, paper bath arts for
decorative purposes and printed art reproductions; printed
awards; paper bags, plastic trash bags, general purpose
plastic bags, grocery bags, merchandise bags, plastic bags for
disposable diapers, and paper bags for packaging; ball point
pens; bank checks; paper blinds; blinders for personal use;
blackboards; paperboard blanks; printing blocks; blotters;
blueprints; paste board, poster board, art sketching boards,
bristol boards, bulletin boards, clipboards, magnetic boards,
picture framing mat boards and paper boards; book bindings;
blank bookkeeping, partially-printed, printed, business, and
accounting forms; booklets and books on the subject of child
care; paper boxes, pencil boxes, cardboard boxes, and
stationery boxes; bumper stickers; business cards; business
forms; business record books; calendar desk stands, desktop

document stands, calendar stands, sheet music stands, and desk stands for pens, pencils and ink; calendars; card files; cardboard; announcement cards, blank cards, filing cards, greeting cards, index cards and note cards; cartoon prints and newspaper cartoons; flip chart carrying cases, pen and pencil cases, and playing card cases; cash receipt books; catalogs in the field of child care; paper closures for container; copy books, copy paper, and copyholders; coupons; aquarium covers, book covers, checkbook covers, paint roller covers, and paper covers for telephone receivers; daily planners; data books; directories on the subject of child care; disposable diapers; document files and document holders; envelopes; erasers; paper expanding files; file folders; folders; lettering guides, numbering guides and printed guides on the topic of child care; illustrations; index books; address labels and printing labels not of textiles; printed lectures; letter files; informational letters concerning child care; lithographs and lithographic prints; magazine departments relating to the topic of child care; manuals; negotiable instrument forms; news bulletins; newsletters in the field of child care; newspapers; order forms; art pads, calendar desk pads, desk pads, inking pads, note pads, prescription reminder pads, score pads, scratch pads, drawing pads, stamp pads, writing pads, and sandpaper pads for sharpening drawing pencils; adding machine paper, art paper, bond paper, carbon paper, cleaning and polishing paper, computer paper, construction paper, copy paper, corrugated paper, craft paper, crepe paper filler paper, gift wrapping paper, illustration paper, laminated paper, lining paper, loose-leaf paper, newsprint paper, note paper, packing paper, recycled paper, tissue paper, toilet paper, and synthetic paper; mounted and unmounted photographs; printing type; printed survey answer sheets and printed answer sheets on the subject of child care; sheet music, score sheets, instruction sheets on diapers and child care, and sheet books of paper and music; file sorters and memo sorters in International Class 16

(the "Subject Registration").

First Quality Baby Products, LLC, a Delaware limited liability company with a place of business at 80 Cuttermill Road, Suite 409, Great Neck, NY 11021 ("Petitioner")

believes that it is or will be damaged by the above-identified registration and therefore, petitions to cancel the same.

1. Petitioner, a Delaware limited liability company maintaining a place of business at 80 Cuttermill Road, Suite 409, Great Neck, NY 11021 (“Petitioner”), believes that it will be damaged by the continued registration of this trademark and hereby petitions to cancel the same.

2. Petitioner and its related companies are well established manufacturers and sellers of a variety of products, including baby diapers, incontinence products and feminine hygiene products.

3. Among the many marks owned by Petitioner is the well known mark CUTIES, which Petitioner, through itself and its predecessor-in-interest, has used in connection with baby diapers for more than ten years, since May 14, 1998 (the “CUTIES Mark”). Petitioner, through itself and its predecessor-in-interest has also used the CUTIES Mark in connection with non-medicated baby wipes since October 18, 2002.

4. The CUTIES Mark is the subject of U.S. Trademark Reg. No. 2,881,901 of September 7, 2004, a copy of which is annexed hereto as Exhibit A (the “’901 Registration”).

5. The ‘901 Registration was filed on the basis of intent-to-use on August 25, 1997, and thus, Petitioner is accorded August 25, 1997 as its priority date.

6. The ‘901 Registration is in full force and effect and has never been abandoned.

7. The CUTIES Mark has been advertised to the trade and purchasing public and has been the subject of unsolicited media attention.

8. The CUTIES Mark, by reason of the high quality of the baby diapers and wipes sold under the Mark, has come to be known to the purchasing public as representing products of the highest quality.

9. Based on the foregoing, the CUTIES Mark has obtained secondary meaning, and the Mark and the goodwill associated therewith are of inestimable value to Petitioner.

10. Upon information and belief, long after Petitioner's predecessor-in-interest filed its intent-to-use Application for the CUTIES Mark which eventually matured into the '901 Registration, long after Petitioner's predecessor-in-interest commenced use of the CUTIES Mark in conjunction with baby diapers and obtained the '901 Registration, and long after the CUTIES Mark acquired secondary meaning, Registrant applied to register the mark CUTIE BABY in connection with a number of goods, including, most notably, diaper products - i.e., diapers, plastic bags for disposable diapers and instruction sheets on diapers (the "Subject Mark").

11. In the resulting Registration (the "Subject Registration"), the word "baby" is disclaimed.

12. The Subject Mark as applied to diaper products is confusingly similar to Petitioner's CUTIES Mark. The likelihood of confusion is particularly great since the diaper products are identical and closely related, and the marks are nearly identical - the only difference being that the Subject Mark appears in plural, and includes the purely descriptive, non-source identifying element, "baby."

13. Registrant's registration and/or use of the Subject Mark, in view of Petitioner's priority filing date and priority of use of the CUTIES Mark, is likely to cause confusion, to cause mistake or to deceive.

14. For at least the reasons stated herein, the continued registration of the Subject Registration is damaging and will continue to damage Petitioner.

15. Upon information and belief, Registrant has committed fraud on the Patent and Trademark Office in seeking to procure registration of the Subject Mark.

16. Specifically, upon information and belief, on or about January 23, 2003, when Registrant, through its counsel, filed its Amendment to Allege Use for the Application which eventually matured into the Subject Registration (the "Subject Application"), it falsely stated that the Subject Mark was in use in commerce in connection with all the goods covered by the Subject Application.

17. Upon information and belief, at the time this false representation was made, Registrant knew or should have known that the Subject Mark was not being used in commerce with all the goods identified in the Subject Application.

18. Upon information and belief, Registrant's false representation was made with the intent to procure a registration.

19. Upon information and belief, Registrant's false representation was made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to pass the Subject Application to publication, and reasonably relying upon the truth of said false statement, the U.S. Patent and Trademark Office did, in fact, pass the Subject Application to publication.

20. Based on the foregoing, it is alleged that Registrant has committed fraud in attempting to procure a registration for the Subject Mark, thus making the Subject Registration void.

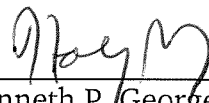
21. For at least the reasons stated herein, the continued registration of the Subject Registration is damaging and will continue to damage Petitioner.

WHEREFORE, Petitioner prays that the within Petition be granted and U.S. Trademark Registration No. 2,782,232 be canceled.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Petitioner
90 Park Avenue
New York, New York 10016
(212) 336-8000

Dated: New York, New York
May 14, 2009

By: 
Kenneth P. George
Holly Pekowsky

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is one of the attorneys for Petitioner in the above-captioned Cancellation proceeding and that on the date which appears below, she caused copies of the foregoing PETITION TO CANCEL to be served on Registrant and Registrant's listed counsel by Federal Express, postage pre-paid, as follows:

ABS International Division, S.A. de C.V.
Sigma No. 9235 Parque Industrial Mitras
Garza Garcia, N.L. 66000
Mexico

Nicole B. Emmons, Esq.
Baker & McKenzie
2300 Trammell Crow Center
2001 Ross Avenue
Dallas TX 75201



Holly Pekowsky

Dated: New York, New York
May 14, 2009

EXHIBIT A

Int. Cls.: 3 and 16

Prior U.S. Cls.: 1, 2, 4, 5, 6, 22, 23, 29, 37, 38,
50, 51 and 52

Reg. No. 2,881,901

United States Patent and Trademark Office

Registered Sep. 7, 2004

Corrected

OG Date July 22, 2008

TRADEMARK
PRINCIPAL REGISTER

CUTIES

FIRST QUALITY PRODUCTS, INC. (NEW
YORK CORPORATION)
80 CUTTERMILL ROAD, SUITE 409
GREAT NECK, NY 11021

FOR: NON-MEDICATED BABY
WIPES, IN CLASS 3 (U.S. CLS. 1, 4, 6,
50, 51 AND 52).

FIRST USE 10-18-2002; IN COMMERCE
10-18-2002.

FOR: DISPOSABLE BABY DIAPERS,
IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29,
37, 38 AND 50).

FIRST USE 5-14-1998; IN COMMERCE
5-14-1998.

SER. NO. 75-355,994, FILED 8-25-1997.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on July 22, 2008.*

DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE