

ESTTA Tracking number: **ESTTA299542**

Filing date: **08/06/2009**

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

Proceeding	92051104
Party	Plaintiff NSM Resources Corporation
Correspondence Address	Zane Murdock NSM Resources Corporation PO Box 931162 Los Angeles, CA 90093 UNITED STATES zane@huckdoll.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Zane Murdock
Filer's e-mail	zane@huckdoll.com
Signature	/zanemurdock/
Date	08/06/2009
Attachments	CancelMountainHardwearAmended.pdf (4 pages)(31278 bytes)

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

In the matter of Trademark Registration
Serial No.: 3120463
Filed: August 9, 2005
Trademark: MOUNTAIN HARD WEAR
Registered: July 25, 2006

NSM Resources Corporation)	
)	
Petitioner,)	
)	Petition No. 92051104
v.)	
)	AMENDED PETITION
Mountain Hardwear Inc.)	
)	
Registrant)	

NSM Resources Corporation (“NSM”) (“Petitioner”) is a current Nevada Corporation qualified to operate in California. Petitioner NSM has a home office mailing address of PO Box 931162, Los Angeles, CA, 90093, USA. Petitioner NSM owns at least following: the Registered Trademark No. 3310854 for the mark HUCK DOLL namely for toys and accessories therefor and the Registered Trademark No. 3435920 for the mark HUCK namely for clothing and footwear. On this day, August 6, 2009, the Petitioner files this Amended Petition.

The Petitioner believes it is being damaged by the use of Registered Trademark No. 3120463 for MOUNTAIN HARD WEAR for namely backpacks and believes this registration should be cancelled.

1. Upon information and belief, the Registrant Mountain Hardwear (“MH”) is a Corporation of the State of Utah and is a subsidiary of Columbia Sportswear, an Oregon Corporation,

both believed to have a principal place of business of 14375 NW Science Park Drive, Portland, OR, 97229.

2. The Registrant MH uses the mentioned Registration in a generic way. The Registrant MH uses MOUNTAIN HARD WEAR to attempt to identify backpacks mainly for use in the mountains. People typically refer to backpacks as “hard” goods. People typically wear backpacks. Thus, to say a backpack is a MOUNTAIN HARD WEAR backpack does not give any identification of who manufactures, markets, or sells this backpack. In this way, this mark is generic.
3. On its own, the MOUNTAIN HARD WEAR Registration does not define the product in question, as the Registrant MH must use secondary names to classify these backpacks. The Registrant MH allocates these secondary names to identify this Registration, including but not limited to the following: *Trad*, *Scrambler*, *Drifter*, *Splitter*, and *Bebop*. Thus, the Registrant MH uses descriptive names for its backpacks, and the MOUNTAIN HARD WEAR Registration remains generic.
4. The Petitioner NSM believes that the Registrant MH makes an undeniably good product; however, the Petitioner NSM believes this Registration for MOUNTAIN HARD WEAR has no distinctiveness. The damage in this instance results from the Registrant MH’ s monopolistic control of a common phrase, and according reckless behavior in secondary name selection and defense thereof.

WHEREFORE, the Petitioner requests that the USPTO cancel the Registrant’ s Trademark MOUNTAIN HARD WEAR for backpacks. Since this is an Amended Petition, the Petitioner has already filed this petition with the prescribed fee of \$300.

Sincerely yours,
/zanemurdock/

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CERTIFICATE OF SERVICE BY FIRST-CLASS MAIL

On August 6, 2009, I deposited in the United States Mail a properly addressed, postage prepaid envelope containing a true copy of this document served on:

Michael A. Cohen
Schwabe, Williamson & Wyatt
1211 SW Fifth Avenue Suites 1500-2000
Portland, OR 97204
USA

I declare under the penalty of perjury of the State of California that the foregoing is true and correct.

Dated: August 6, 2009

/zanemurdock/
Zane Murdock
President / NSM
NSM Resources Corporation
PO Box 931162
Los Angeles, CA 90093
USA