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Filing date: **08/12/2009**

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	Sports Unlimited, Inc.		
Entity	Corporation	Citizenship	Pennsylvania
Address	1500 Industry Road Suite P Hatfield, PA 19440 UNITED STATES		

Attorney information	Shawn R. Farmer Muskin & Cusick, LLC 100 W. Main Street Suite 205 Lansdale, PA 19446 UNITED STATES sfarmer@patentstrademarks.com Phone:2158538259		
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Registration Subject to Cancellation

Registration No	3211471	Registration date	02/20/2007
Registrant	Paris Accessories, Inc. 350 Fifth Avenue 70th Floor New York, NY 10118 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 1997/07/10 First Use In Commerce: 1997/07/10 All goods and services in the class are cancelled, namely: clothing and footwear; namely, shoes, socks, hosiery, gloves, caps, and scarves
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Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
Other	Likelihood of confusion with senior common law trademarks.

Attachments	1725_001_SPORTS_UNLIMITED_Petition_to_Cancel.pdf (3 pages)(136117 bytes)
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Certificate of Service

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

Signature	/Shawn R. Farmer/
Name	Shawn R. Farmer
Date	08/12/2009

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No. : 3,211,471
For the Mark : SPORTS UNLIMITED
Registered on : February 20, 2007

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SPORTS UNLIMITED, INC., :
:
Petitioner, : Cancellation No. _____
:
v. :
:
PARIS ACCESSORIES, INC., :
:
Registrant. :
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Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION TO CANCEL

Petitioner Sports Unlimited, Inc. a Pennsylvania Corporation (Petitioner) having their principal place of business at 1500 Industry Road, Suite P, Hatfield, PA 19440, believe that they are damaged by the registration of the mark in U.S. Trademark Registration No. 3,211,471 issued February 20, 2007.

To the best of petitioner's knowledge, the name and address of the current owner of the Registration is Paris Accessories, Inc, a New York corporation located at 350 Fifth Avenue, 70th Floor, New York, New York 10118.

The above-identified Petitioner believes that it will be and has been damaged by the above-identified registration, and hereby petitions to cancel same. Petitioner's Application Serial No. 77/792,962 is currently pending before the USPTO. Petitioner's application will be damaged by continued registration of the SPORTS UNLIMITED mark, Registration number 3,211,471. Furthermore, Petitioner has used the SPORTS UNLIMITED and similar SPORTS UNLIMITED INC.COM marks in commerce since 1998 in connection with on-line retail sales of sporting goods, including goods identified in Respondent's registration.

The grounds for cancellation are as follows:

1. The mark was not in use on the goods listed in the application at the time of filing. The Application for registration of the SPORTS UNLIMITED mark was filed on June 15, 2006. The goods listed in the Application include “clothing and footwear; namely, shoes, socks, hosiery, gloves, caps, and scarves in Class 25” (hereafter The Goods). The mark has not in fact been used on The Goods listed in the Application. The Applicant knowingly made a material false representation to the USPTO in order to obtain registration of its trademark for the identified goods.

2. The registered mark was obtained fraudulently. The Applicant or Applicant’s representative signed a declaration stating that the mark was in use on all of The Goods listed in the Application. Since the mark was not in use on all of The Goods in the application at the time of filing or the time of registration, this constitutes fraud on the USPTO. *See Section 14(3) of the Lanham Act, 15 U.S.C. § 1064(3) and Medinol Ltd. v. Neuro Vasx, Inc., 67 USPQ2d 1205 (TTAB 2003).*

3. The SPORTS UNLIMITED registration was obtained by knowingly false or fraudulent statements. The facts fall under the ruling of the Board in the Medinol case where Petitioner alleged that “false statements were made with the intent to induce authorized agents of the PTO to grant said registration, and reasonably relying upon the truth of said false statements, the PTO did, in fact, grant said registration to Registrant.” The Board concluded “[i]f fraud can be shown in the procurement of a registration, the entire resulting registration is void.” Medinol Ltd. v. Neuro Vasx, Inc., 67 USPQ2d 1205 (TTAB 2003).

4. The mark has been abandoned. If the mark was previously used on all of The Goods in the application, the mark is no longer used on all of The Goods in the application, and has not been used on The Goods in the application for more than three consecutive years. Lanham Act Section 45. Prima facie abandonment of a mark is established by nonuse for three consecutive years. Imperial Tobacco Ltd. v. Philip Morris Inc., 899 F.2d 1575, 1579. 14 USPQ2d 1390, 1393 (Fed. Cir. 1990). Section 14(3) of the Lanham Act, 15 U.S.C. § 1064(3).

5. Use of Registrant’s SPORTS UNLIMITED mark on products, which are the same or similar to those sold by Petitioner, create a likelihood of confusion with Petitioner’s SPORTS UNLIMITED INC.COM common law trademark rights.

WHEREFORE, Petitioner requests that Registration No. 3,211,471 be cancelled under Section 14, subparagraph 3 of the Lanham Act, 15 U.S.C. S 1064 and that this Petition for Cancellation be sustained in favor of Petitioner.

Please direct all correspondence to:

Shawn R. Farmer
Muskin & Cusick LLC
100 W. Main Street, Suite 205
Lansdale, PA 19446

Petitioner herein appoints Shawn R. Farmer and Clinton J. Cusick as its attorneys to transact all business in the U.S. Patent and Trademark Office related to this matter.

Accompanying the electronic submission of this Petition for Cancellation is the required fee of \$300.

Respectfully submitted,

SPORTS UNLIMITED, INC.

By its Attorneys



Shawn R. Farmer
Muskin & Cusick LLC
100 W. Main Street, Suite 205
Lansdale, PA 19446

Our Ref.: 1725-001