

ESTTA Tracking number: **ESTTA310934**

Filing date: **10/12/2009**

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	Small World Fashion		
Entity	dba of Martha L. Koltunczyk	Citizenship	CA
Address	430 S. Los Angeles Street, #20 Los Angeles, CA 90013 UNITED STATES		

Attorney information	Jen-Feng Lee WorldEsquire Law Firm LLP 80 S. Lake Avenue, #708 Pasadena, CA 91101 UNITED STATES jflee@worldesquire.com Phone:626-795-5555
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Registration Subject to Cancellation

Registration No	3418299	Registration date	04/29/2008
Registrant	Jay-Y Enterprise Co., Inc. 632 New York Drive Pomona, CA 91768 UNITED STATES		

Goods/Services Subject to Cancellation

Class 009. First Use: 2005/09/01 First Use In Commerce: 2005/09/01
All goods and services in the class are cancelled, namely: Sunglasses

Grounds for Cancellation

Deceptiveness	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
The mark is merely descriptive	Trademark Act section 2(e)(1)

Related Proceedings	TTAB Cancellation #92051386 (suspended)
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Attachments	NotcCancellation-SmallWord.pdf (4 pages)(24602 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	/jflee/
Name	Jen-Feng Lee
Date	10/12/2009

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

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4 In the matter of Registration No.: 3,418,299
5 Registered date: Apr. 29, 2008
6 Mark: LOCS

7 Small Word Fashion,
8 Petitioner,
9 vs.
10 Jay-Y Enterprise Co. Inc.
11 Registrant.

Cancellation No.:

Action filed: October 12, 2009

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14 **Notice of Petition for Cancellation**

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16 Come now Petitioner Small World Fashion (“Small Word”), DBA of Martha L.
17 Koltunczyk, having principal business address of 430 S. Los Angeles Street #20, Los
18 Angeles, California, 90013, and for cancellation of the mark of “LOCS” (“Mark” or
19 “LOCS”) registered by Jay-Y Enterprise Co. Inc. (“Jay-Y” or “Registrant”), a California
20 corporation located at 632 New York Drive, Pomona, CALIFORNIA 91768, states as
21 follows:

- 22
23 1. Petitioner is in the business of selling sunglasses. Petitioner sells gangster-
24 themed sunglasses that are commonly known as “LOCS” style, which is a term
25 used in the trade to mean the gangsta fashion and not to identify any particular
26 source.
27 2. On information and belief, “LOCS” sunglasses were on the market on or before
28 July, 2005 and were made popular by the appeal of street gangster culture.

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- 1 3. To Petitioner's best knowledge, Registrant's current address remains unchanged
2 at 632 New York Dr., CA 91768. Petitioner made this disclosure pursuant to 37
3 CFR 2.112(a).
- 4 4. By its own admission, Registrant filed the application ("Application") for said
5 Mark on or about January 26, 2006, claiming the exclusive right for said Mark in
6 connection with sunglasses; said Application purported to state that Registrant
7 first adopted and began using said Mark no later than September 1, 2005.
- 8 5. On or about April 29, 2008, said Mark was registered by United States Patent
9 and Trademark Office ("USPTO"), having registration number 3,418,299.
- 10 6. USPTO's records showed that, on the date of filing the Application, Applicant
11 made factual declaration ("Declaration") under penalty of perjury re the follow
12 statement:

13 Applicant "believes to be entitled to use such mark in commerce; to the
14 best of his/her knowledge and belief no other person, firm, corporation, or
15 association has the right to use the mark in commerce, either in the identical
16 form thereof or in such near resemblance thereto as to be likely, when used
17 on or in connection with the goods/services of such other person, to cause
18 confusion, or to cause mistake, or to deceive; and that all statements made of
19 his/her own knowledge are true; and that all statements made on information
20 and belief are believed to be true."

- 21 7. Petitioner believes Jay-Y gave material false statement in its Application because
22 "LOCS" was already a term used by some rappers, wiggers, or chongas to
23 represent a certain clothing and accessory fashion and/or gangsta uniform,
24 including sunglasses.
- 25 8. Petitioner believes Jay-Y knew "LOCS" was meant to signify or describe such
26 gangsta fashion or uniform and was used by public without any restriction, at the
27 time of submitting its Application to US PTO.
- 28

Notice of Petition for Cancellation

- 1 9. Petitioner is injured when Jay-Y fraudulently registered the “LOCS” mark to
2 claim exclusive right to a style or fashion that was used by many merchants
3 before Registrant first adopted to be its trademark.
- 4 10. Petitioner believes Jay-Y gave material false statement in its Application because
5 “LOCS” was already a term used by popular gangster-related culture to mean
6 “dark sunglasses”, in or around October of 2002, and is thus subject to
7 cancellation as a result of the fraud committed.
- 8 11. On information and belief, definition of “LOCS” can be easily Googled and was
9 given by www.urbandictionary.com, in an entry dated Oct 7, 2002, that “locs”
10 described “Dark sunglasses, as worn by Compton gangsters”.
- 11 12. On information and belief, definition of “LOCS” to mean “dark sunglasses” can
12 be found by other unbiased online references, such as www.222antigang.org.
- 13 13. Petitioner believes that, as a result, “LOCS” is merely descriptive of the goods
14 used in commerce, in violation of Trademark Act section 2(e)(1), and is thus
15 subject to cancellation.
- 16 14. Petitioner believes that, as a result, “LOCS” is a deceptive mark, in violation of
17 Trademark Act section 2(a), instead of serving as an indicator for a specific
18 source of products.

19 Respectfully submitted,

20 **Dated:** Oct. 12, 2009

/jflee/

21 _____
22 Jen-Feng (Jeff) Lee
23 Kenneth K. Tanji, Jr.
24 Attorneys for Petitioner,
25 Small Word Fashion

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CERTIFICATE OF SERVICE

The undersigned Attorney hereby certifies that a copy of the foregoing Petitioner's Notice of Petition for Cancellation was served on the Registrant by mailing a true copy thereof by first class mail, postage prepaid to the following recipient/address on October 12, 2009.

Jay-Y Enterprise, Inc. 632 New York Drive Pomona, CA 91768	Constance R. Lindman Overhauser & Lindman 740 W. Green Meadow Dr., #300 Greenfield, IN 46140 (Current attorney of record)

/jflee/

Jen-Feng Lee

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