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Filing date: **09/13/2013**

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

| | |
|------------------------|---|
| Proceeding | 92057330 |
| Party | Plaintiff David McLane Enterprises, Inc. |
| Correspondence Address | LAURI S THOMPSON GREENBERG TRAUIG LLP 3773 HOWARD HUGHES PARKWAY, SUITE 400N LAS VEGAS, NV 89169 UNITED STATES lvlitdock@gtlaw.com, thompsonl@gtlaw.com, neyc@gtlaw.com, AjemianP@gtlaw.com |
| Submission | Other Motions/Papers |
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| Signature | /s/ Lauri S. Thompson |
| Date | 09/13/2013 |
| Attachments | McLane Errata.pdf(186924 bytes) |

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

In the matter of trademark Registration No. 3701971
For the mark WOWGIRLS in Class 25
Date registered October 27, 2009.

David McLane Enterprises, Inc.

Petitioner,

v.

Golden Song Productions, Inc.

Registrant.

Cancellation No.: 92057330

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**PETITIONER'S ERRATA TO OPPOSITION TO REGISTRANT'S MOTION TO
DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Petitioner, David McLane Enterprises, Inc. ("DME" or "Petitioner"), by and through its counsel, the law firm of Greenberg Traurig, LLP, hereby files this Errata to Opposition to Registrant's Motion to Dismiss (the "Errata") to attach as an exhibit to the Opposition a proposed Amended Petition for Partial Cancellation in connection with its alternative request for leave to amend, which was inadvertently not attached to the Opposition. The last sentence of page 7 of the Opposition should read, "A copy of Petitioner's proposed Amended Petition for Partial Cancellation is attached hereto as **Exhibit 1.**" **Exhibit 1** is attached hereto.

Dated this 13th day of September, 2013.

By: /s/ Lauri S. Thompson

Lauri S. Thompson
GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
(702) 792-3773
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on Fri, Sep 13, 2013, I served the foregoing **ERRATA TO PETITIONER'S OPPOSITION TO REGISTRANT'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6) FOR FAILURE TO STATE A CLAIM** on:

Golden Song Productions, Inc.
7545 Bermuda Road
Las Vegas, NV, 89123

Philip A. Kantor
Law Office of Philip A. Kantor, P.C.
1781 Village Center Circle # 120
Las Vegas, NV 89134

by causing a full, true, and correct copy thereof to be sent by the following indicated method or methods, on the date set forth below:

X by mailing in a sealed, first-Class postage-prepaid envelope, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service at Las Vegas, Nevada.

/s/ Cynthia L. Ney

Exhibit 1

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

In the matter of trademark Registration No. 3701971
For the mark WOWGIRLS in Class 25
Date registered October 27, 2009.

David McLane Enterprises, Inc.

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Cancellation No.: 92057330

BOX TTAB FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

**AMENDED PARTIAL PETITION FOR CANCELLATION FOR ENTIRE CLASS 25
FOR:**

- 1) **FRAUD BASED ON NON-USE OF ALL GOODS LISTED AT THE TIME OF THE STATEMENT OF USE;**
- 2) **USE OF THE MARK IS MERELY ORNAMENTAL, AND AS SUCH FAILS TO FUNCTION AS A TRADEMARK; AND**
- 3) **USE OF THE MARK WAS MERELY A TOKEN USE, AT THE TIME THE STATEMENT OF USE WAS FILED**

David McLane Enterprises, Inc. (“DME” or “Petitioner”), is an Indiana Corporation, having its principal place of business at 4400 No. Meridian Street, Indianapolis, IN, 46208. Petitioner believes that it will be damaged by the Class 25 portion of Registration No. 3701971, for the mark WOWGIRLS, with respect to the Class 25 goods for “clothing for girls and women, namely western-style pants and slacks, skirts, blouses, jackets and coats, neckerchiefs and bandanas, socks, hats, belts, and boots,” and hereby petitions to cancel the same.

On information and belief, the name and address of the current owner of the registration for WOWGIRLS is Golden Song Productions, Inc., 7545 Bermuda Road, Las Vegas, NV, 89123 (“DME” or “Registrant”).

The grounds for cancellation are as follows:

1. On or about January 25, 2007, Registrant filed an application to register the Mark WOWGIRLS, and was assigned Application Serial No. 77088445. This application matured into Registration No. 3701971 (the “THE GOLDEN SONG Mark”).

2. Registrant filed a statement of use, on or about August 19, 2009, claiming use in commerce of the mark WOWGIRLS for “clothing for girls and women, namely western-style pants and slacks, skirts, blouses, jackets and coats, neckerchiefs and bandanas, socks, hats, belts, and boots,” providing a specimen of a shirt with “Wow Girls” incorporating rhinestones and a whip, in a design decoratively placed on the front, which was accepted by the USPTO, and the mark registered for both Class 25 and 41 on October 27, 2009.

3. Petitioner has a good faith belief that Registrant did not in fact have use of its mark on all of the goods listed in its Class 25 description, and thereby carried out a fraud on the USPTO by claiming use of the mark for every item of clothing, namely, western-style pants and slacks, skirts, blouses, jackets and coats, neckerchiefs and bandanas, socks, hats, belts, and boots.”

4. Registrant submitted a specimen to the USPTO to show use of the mark on a shirt, where the mark was merely ornamental, and did not show use of the mark as a trademark, thus the mark failed to function as a trademark.

5. Upon information and belief, Registrant either never did have use of its mark for all of the clothing items listed, or its use of the mark was merely a token use in order to support its registration, rather than use its mark in commerce in the normal course of business. Petitioner believes this was done by Registrant with the intent to deceive the USPTO into believing the Registrant had use of all the goods listed in its application. Therefore, Petitioner seeks to partially cancel Registrant’s registration with respect to Class 25 based either on fraud on the USPTO, for non-use of the mark, or for failure of its use of its mark to function as a trademark.

6. Petitioner filed its application for WOW GIRLS, Serial No. 85353454 in Class 25 and Class 41. Class 41 has since been divided out and a child application has been created.

Petitioner's Class 25 application has been rejected by the Examiner because of the "likelihood of confusion" with Registrants' WOWGIRLS mark in Class 25.

7. In view of the foregoing, Registrant is not entitled to continue registration of Class 25 in its Registration No. 3701971, since it appears that Registrant either did not actually have trademark use of its mark for all of the goods listed in Class 25, at the time Registrant filed its Statement of Use on August 19, 2009, its use was merely ornamental and failed to function as a trademark, or its use was merely a token use, created solely to obtain registration.

WHEREFORE, Petitioner prays that Class 25 of Trademark Registration No. 3701971 be canceled and that this Petition to Cancel be sustained in favor of Petitioner.

Respectfully submitted,

Dated: September 13, 2013

By: /s/ Lauri S. Thompson
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