

ESTTA Tracking number: **ESTTA594325**

Filing date: **03/24/2014**

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	Maidenform LLC		
Entity	limited liability company	Citizenship	Delaware
Address	1000 East Hanes Mill Road Winston-Salem, NC 27105 UNITED STATES		

Attorney information	Laura Popp-Rosenberg Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES lpopp-rosenberg@fzlz.com,jinsley-pruitt@fzlz.com Phone:(212) 813-5900		
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### Registration Subject to Cancellation

Registration No	4218400	Registration date	10/02/2012
Registrant	B Chic Fashion And Style 520 Canoe Ct Redwood Shores, CA 94065 CANADA		

### Goods/Services Subject to Cancellation

Class 025. First Use: 2009/12/01 First Use In Commerce: 2009/12/01 All goods and services in the class are cancelled, namely: Belts; Bikinis; Dresses; Jackets; Pants; Shirts; Shoes; Shorts
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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	Registration void ab initio for non-use and lack of bona fide intent to use

Attachments	Petition for Cancellation (F1418893x96B9E).pdf(212893 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	/Laura Popp-Rosenberg/
Name	Laura Popp-Rosenberg
Date	03/24/2014

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

MAIDENFORM LLC,	X		
	:		
	:		
Petitioner,	:		
	:		
- against -	:	Cancellation No. _____	
	:		
B CHIC FASHION AND STYLE,	:		
	:		
Registrant.	:		
	X		

**PETITION FOR CANCELLATION**

Maidenform LLC (“Petitioner”), a limited liability company organized and existing under the laws of Delaware, with an address of 1000 East Hanes Mill Road, Winston-Salem, North Carolina 27105, believes that it will be damaged by the continued registration of Registration No. 4,218,400 (the “Registration”) issued on October 2, 2012, for the mark B CHIC FASHIONS & Design (the “Registered Mark”), registered in the name of B Chic Fashion And Style, and hereby petitions to cancel the same pursuant to Section 14 of the Lanham Act, 15 U.S.C. § 1064.

As grounds for this petition, Petitioner, by its counsel, states as follows:

1. Petitioner owns Application Serial No. 85/221,574 (“Petitioner’s Application”) to register the mark BE CHIC for “Tank tops; foundation garments; women’s undergarments; lingerie; women’s intimate apparel, namely, brassieres, panties; shapewear, namely, control briefs, boy shorts, thigh-slimmers, pantliners, body briefers, waistnippers, slips, bustiers, unitards, body suits and body shapers” in International Class 25.

2. The United States Patent and Trademark Office (“USPTO”) has cited the Registration under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), as a basis for refusal of registration to Petitioner’s Application.

3. Because the USPTO has cited the Registration as a basis to refuse registration to Petitioner’s Application, Petitioner will be damaged by Registrant’s continued registration of the Registration.

4. Upon information and belief, Registrant is a California corporation with a principal place of business at 520 Canoe Court, Redwood Shores, California 94065.

5. According to the records of the USPTO, the Registration matured from Application Serial No. 85/107,429 (“Registrant’s Application”) which was filed under Section 1(b) of the Lanham Act, 15 U.S.C. §1051(b), based on Registrant’s alleged bona fide intent to use the Registered Mark in commerce in connection with the goods specified in the application, namely, “Belts; Bikinis; Dresses; Jackets; Pants; Shirts; Shoes; Shorts” classified in International Class 25.

6. On July 27, 2012, Registrant submitted a Statement of Use declaring under oath that Registrant was using the Registered Mark “in commerce on or in connection with all goods or services listed in [Registrant’s Application].”

7. According to the records of the USPTO, the USPTO accepted Registrant’s Statement of Use on August 31, 2012 and thereafter issued a registration certificate to Registrant on October 2, 2012.

**COUNT 1: REGISTRATION VOID *AB INITIO* FOR NON-USE**

8. Petitioner repeats and realleges the allegations set forth in paragraphs 1 through 7 as if fully stated herein.

9. Upon information and belief, Registrant operates a retail clothing store under the Registered Mark but does not use and has never used the Registered Mark on or in connection with the goods identified in the Registration, including at or before Registrant filed its Statement of Use of July 27, 2012.

10. Based on the foregoing, Registrant has not met the statutory requirement for use in commerce in connection with the goods identified in the Registration, and the Registration is therefore void *ab initio*.

**COUNT 2: REGISTRATION VOID *AB INITIO*  
FOR LACK OF BONA FIDE INTENT TO USE**

11. Petitioner repeats and realleges the allegations set forth in paragraphs 1 through 10 as if fully stated herein.

12. Upon information and belief, at the time Registrant filed Registrant's Application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), based on an alleged bona fide intent to use the applied-for mark in commerce, Registrant did not in fact have a bona fide intent to use the applied-for mark in commerce in connection with all the goods identified in the application.

13. Based on the foregoing, Registrant did not meet the statutory requirement for filing a trademark application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), and the Registration is therefore void *ab initio*.

**COUNT 3: ABANDONMENT**

14. Petitioner repeats and realleges the allegations set forth in paragraphs 1 through 13 as if fully stated herein.

15. Upon information and belief, Registrant does not use and has never used the Registered Mark in connection with all of the goods identified in the Registration.

16. Based on the foregoing, Registrant has abandoned the Registered Mark.

#### COUNT 4: FRAUD

17. Petitioner repeats and realleges the allegations set forth in paragraphs 1 through 16 as if fully stated herein.

18. In connection with the Registration, Registrant swore under oath in its Statement of Use that Registrant was using the Registered Mark “in commerce on or in connection with all goods or services listed in [Registrant’s Application]” as of July 27, 2012.

19. Upon information and belief, as of July 27, 2012, as well as the alleged dates of first use and first use in commerce, Registrant was not using the Registered Mark in U.S. commerce in connection with all of the goods identified in Registrant’s Application.

20. Upon information and belief, Registrant knowingly misrepresented that it had used the Registered Mark in connection with all of the goods identified in Registrant’s Application when it filed its Statement of Use and intended the USPTO to rely on such misrepresentation. Upon information and belief, Registrant knew that such representation was false because Registrant was in the best position to know about any use (or lack of use) it had made of the Registered Mark. In fact, the specimen submitted with the Statement of Use does not show the mark being used on any of the goods identified in Registrant’s Application, and Registrant knew that the submitted specimen did not evidence use on such goods.

21. Upon information and belief, Registrant filed the materially false Statement of Use willfully, in bad faith, and with an intent to obtain a registration to which Registrant would not otherwise have been entitled.

22. Upon information and belief, Registrant’s misrepresentation was material and was relied upon by the Examining Attorney of the USPTO in accepting Registrant’s Statement of Use and in allowing Registrant’s Application to mature to registration.

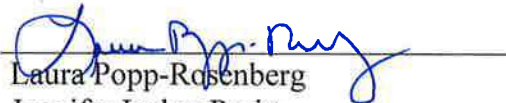
23. Accordingly, Registrant committed fraud on the USPTO in connection with Registrant's Application that matured into the Registration.

WHEREFORE, Petitioner respectfully requests that this cancellation proceeding be sustained and that Registration No. 4,218,400 be cancelled.

Dated: New York, New York  
March 24, 2014

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By:

  
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*Attorneys for Petitioner Maidenform LLC*

## CERTIFICATE OF SERVICE

I hereby certify that on this 24<sup>th</sup> day of March, 2014, I caused a true and correct copy of the foregoing PETITION FOR CANCELLATION to be served by First Class U.S. mail, postage prepaid, on the registrant at the following address:

B CHIC FASHION AND STYLE  
520 Canoe Ct.  
Redwood City, CA 94065-1202

  
Laura Popp-Rosenberg