

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

DUNN

Mailed: July 13, 2015

Cancellation No. 92060707

*Guess? IP Holder L.P.*

*v.*

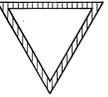
*Knowluxe*

***By the Trademark Trial and Appeal Board:***

Knowluxe (Respondent) owns Registration No. 86224067, which issued October 21, 2014 for the mark below for “caps; t-shirts.”



Guess? IP Holder L.P. (Petitioner) filed a petition to cancel Registration No. 86224067 on the grounds of priority of use and likelihood of confusion, and dilution based on Petitioner’s common law rights and the pleaded marks listed below. In lieu of filing an answer, Respondent moved to dismiss the petition under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted, arguing that the petition to cancel includes no plausible allegations to support its claims. The motion is fully briefed.

Reg. No. 1271896 issued March 27, 1984		men's and women's pants and jumpsuits, and women's blouses, skirts, shorts, vests, jackets and dresses
Reg. No. 1465363 issued Nov. 17, 1987		clocks and watches
Reg. No. 1546993 issued Jul. 11, 1989		perfume
Reg. No. 1858982 issued Oct. 18, 1994		retail store services in the field of apparel and personal accessories
Reg. No. 2306943 issued January 11, 2000		clothing, namely, bottoms, jeans, trousers, sweatpants, pants, jumpsuits, overalls, shortalls, shorts and skirts
Reg. No. 2322937 issued Feb. 29, 2000		<p>eyewear, namely, eyeglasses, sunglasses, eyeglass cases, eyeglass pouches, eyeglass frames and eyeglass chains</p> <p>watches, clocks, jewelry, cuff-links and tie clips</p> <p>backpacks, handbags, small leather goods, namely, wallets, tri-fold wallets, hip fold wallets, credit card cases, credit card/money folding wallets, key cases, travel bag for toiletries, luggage, purses, coin purses, cosmetic cases, totes, carry-on totes, briefcases, tote bags, book bags, travel bags, duffel bags, and cloth shipping bags</p> <p>apparel, namely, bandannas, baseball caps, belts, blouses, bodysuits, booties, boxer shorts, bras, bustiers, camisoles, caps, cardigans, cloth bibs, cloth caps, crew shirts, crop tops, dresses, footwear, halters, hooded</p>

		cover ups, hooded shirts, hooded jumpers, jackets, jeans, jumper dresses, jumpers, jumpsuits, leggings, leotards, men's briefs, miniskirts, one-piece underwear suits, overall playsuits, overalls, panties, pants, pantsuits, polo shirts, pull-overs, robes, rompers, shirts, shortalls, short sets, shorts, skirts, skorts, sleepers, socks, sport shirts, stretch pants, stretch tops, suspenders, sweaters, sweatpants, sweatshirts, sweatsuits, swimwear, swimwear cover-ups, tank tops, tap pants, teddies, tights, t-shirts, turtlenecks, undershirts, underwear and vests
Reg. No. 3046488 issued January 17, 2006		men's, women's, boys', girls', children's and infant's apparel, namely, underwear, footwear, swimwear, caps, headwear, robes, pajamas, hosiery, gloves, belts, neckties, undershirts, socks, shirts, t-shirts, sweatpants, sweatshirts, knit tops, skirts, pants, trousers, shorts, sweaters, jeans, vests, coats, jackets, overalls, blazers, dresses, scarves, blouses, cardigans, gowns, golf shirts, jogging suits, turtlenecks, suits and polo shirts; women's panties, bras, tank tops, crop tops, bustiers, camisoles, tap pants, teddies; men's briefs and boxer shorts

In order to withstand a motion to dismiss, Petitioner need only allege such facts which, if proved, would establish that Petitioner is entitled to the relief sought; that is, (1) Petitioner has standing to bring the proceeding, and (2) a valid statutory ground exists for cancelling the registration. *Fair Indigo LLC v. Style Conscience*, 85 USPQ2d 1536, 1538 (TTAB 2007). Specifically, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In the context of cancellation proceedings before the Board, a claim is plausible on its face when the petitioner pleads factual content that if proved, would allow the Board to conclude, or draw a

reasonable inference that, the petitioner has standing and that a valid ground for cancellation exists. *Corporacion Habanos SA v. Rodriguez*, 99 USPQ2d 1873, 1874 (TTAB 2011). In the Board's assessment of respondent's motion to dismiss, we must accept as true all of the petitioner's well-pleaded allegations, and we must construe the complaint in the light most favorable to the petitioner. *See Advanced Cardiovascular Sys. Inc. v. SciMed Life Sys. Inc.*, 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993).

Petitioner pleads that prior to Respondent's priority date, Petitioner used marks comprising various inverted triangle designs, alone and in combination with other terms, in connection with the sale of various fashion and consumer products, including apparel, and that Petitioner owns the pleaded registrations for inverted triangle designs for apparel and related goods. This is sufficient to plead Petitioner's standing. *See King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974).

The petition to cancel also pleads that the goods and services of the parties are related; and that Respondent's mark so resembles Petitioner marks as to create a likelihood of confusion. No more is necessary to plead the likelihood of confusion claim. *See Hornblower & Weeks, Inc. v. Hornblower & Weeks, Inc.*, 60 USPQ2d 1733, 1735 (TTAB 2001).

The petition to cancel pleads that Petitioner's inverted triangle marks became famous prior to Respondent's first use, and that Respondent's use will cause dilution by blurring the distinctiveness of Petitioner's famous marks. These

allegations suffice to plead a dilution claim. *See The Toro Company v. ToroHead, Inc.*, 61 USPQ2d 1164, 1181 (TTAB 2001).

If Petitioner proves its allegations, Petitioner will prevail. Respondent's arguments regarding Petitioner's ability to prove the facts alleged are more appropriate on summary judgment or as part of its trial brief. Respondent's arguments have no place in a motion to dismiss, which addresses only the sufficiency of the claims, not the evidence which may be submitted at a later date.

Respondent's motion to dismiss is DENIED.

Respondent is ordered to file its answer to the petition to cancel within TWENTY DAYS of the mailing date of this order.

Proceedings herein are resumed and dates are reset below.

Deadline for Discovery Conference	<b>8/30/2015</b>
Discovery Opens	<b>8/30/2015</b>
Initial Disclosures Due	<b>9/29/2015</b>
Expert Disclosures Due	<b>1/27/2016</b>
Discovery Closes	<b>10/5/2015</b>
Plaintiff's Pretrial Disclosures	<b>11/19/2015</b>
Plaintiff's 30-day Trial Period Ends	<b>1/3/2016</b>
Defendant's Pretrial Disclosures	<b>1/18/2016</b>
Defendant's 30-day Trial Period Ends	<b>3/3/2016</b>
Plaintiff's Rebuttal Disclosures	<b>3/18/2016</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>4/17/2016</b>

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

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Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.