

ESTTA Tracking number: **ESTTA690940**

Filing date: **08/21/2015**

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

Proceeding	92061206
Party	Defendant NHS, Inc.
Correspondence Address	ALLISON A MANOV HOGE FENTON JONES & APPEL 60 S MARKET ST STE 1400 SAN JOSE, CA 95113 UNITED STATES uspto@hogefenton.com, rwp@hogefenton.com
Submission	Motion to Amend Registration
Filer's Name	Martha R. Lopez
Filer's e-mail	uspto@hogefenton.com, rwp@hogefenton.com
Signature	/Martha R. Lopez/
Date	08/21/2015
Attachments	Motion to Amend Registration (FINAL).pdf(240584 bytes )

**Registration Subject to the filing**

Registration No	4288050	Registration date	02/12/2013
Registrant	NHS, Inc. 104 Bronson Street, #9 Santa Cruz, CA 95062 UNITED STATES		

**Goods/Services Subject to the filing**

Class 025. First Use: 1978/00/00 First Use In Commerce: 1978/00/00  
Requested goods and services in the class: swimwear

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

In the matter of the trademark Registration No. 4,288,050  
For the mark: INDEPENDENT  
Date registered: 02/12/2013

ACUMEN BRANDS, INC.,	)	Cancellation No. 92061206
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
NHS, INC.,	)	
	)	
Registrant	)	
	)	
	)	
	)	

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**MOTION TO AMEND REGISTRATION**

Upon a motion to the Board during an inter partes proceeding, a trademark registrant may amend its registration to restrict its identification of goods if the mark would not be materially altered or require republication. Here, Registrant NHS, Inc. brings this Motion to Amend Registration to remove “jeans” and “swimwear” from its identification of goods. NHS brings this motion pursuant to 27 C.F.R. § 2.173, TBMP § 514, and Trademark Law 7(e), 15 U.S.C. § 1057(e).

A registration subject to a cancellation proceeding may be amended either with the consent of the other party and the approval of the Trademark Trial and Appeal Board (the “Board”) or upon a motion granted by the Board. 37 C.F.R. § 2.133(a); TBMP § 514.03 (“The Board, in its discretion, may grant a motion to amend an application or registration which is the subject of an inter partes proceeding, even if the other party or parties do not consent thereto.”).

As amended, the registration must still be registrable as a whole, and the amendment must not materially alter the character of the mark. 37 C.F.R. § 2.173(c)-(d). An amendment to an identification of goods may be permitted when the amendment restricts the identification or would not require the republication of the mark. 37 C.F.R. § 2.173(e).

In this motion, NHS requests the removal of “jeans” and “swimwear” from its identification of goods. The following is the current identification of goods, indicating that “jeans” and “swimwear” should be removed:

Class 025: Clothing, namely, tops, tank tops, t-shirts, long-sleeve shirts; pants, ~~jeans~~, shorts; sweatshirts and jackets; ~~swimwear~~; belts; headwear, caps and beanies; socks.

After amendment, the identification of goods should be as follows:

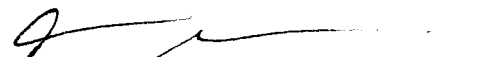
Class 025: Clothing, namely, tops, tank tops, t-shirts, long-sleeve shirts; pants, shorts; sweatshirts and jackets; belts; headwear, caps and beanies; socks.

As amended, the registration is still registrable as a whole. Furthermore, the removal of “jeans” and “swimwear” restricts the identification and would not require republication of the mark. As of the date of the filing of this motion, Acumen Brands, Inc. has not consented to this amendment. However, NHS requests that the Board grant this amendment to clarify the issues of Acumen’s Petition to Cancel, which currently emphasizes the inclusion of “jeans” in NHS’s registration. *See* First Amended Petition to Cancel, ¶¶ 27-28.

DATED: August 20, 2015

HOGUE, FENTON, JONES & APPEL, INC.

By

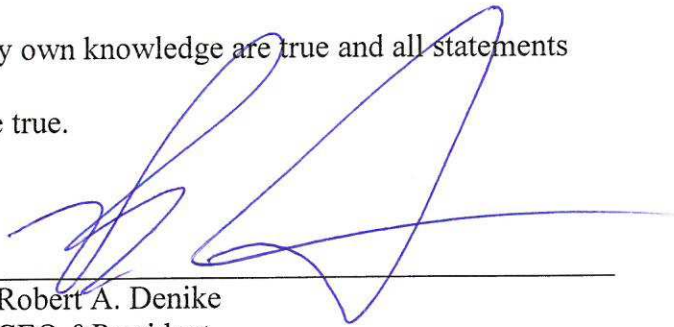


Allison A. Manov  
Attorneys for Registrant  
NHS, INC.

**DECLARATION OF ROBERT A. DENIKE**

I, Robert A. Denike, being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of this motion or any registration resulting therefrom, declares that all statements made of my own knowledge are true and all statements made on information and belief are believed to be true.

DATED: August 19, 2015



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Robert A. Denike  
CEO & President  
NHS, INC.

**CERTIFICATE OF SERVICE**

I, Maricela Duarte, hereby certify that a true and complete copy of the foregoing:

**MOTION TO AMEND REGISTRATION**

was served via First-Class U.S. Mail, postage prepaid, on August 21, 2015, upon Petitioner's counsel of record:

Mark Murphey Henry  
Henry Law Firm  
PO Box 4800  
Fayetteville, AR 72702

Executed on August 21, 2015, at San Jose, California.

  
Maricela Duarte