

ESTTA Tracking number: **ESTTA709844**

Filing date: **11/20/2015**

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	BRAND CONTROL LTD		
Entity	UK Limited Company	Citizenship	United Kingdom
Address	Emerald Way, Stone Business Park Stone, Staffordshire, ST15OSR UNITED KINGDOM		

Attorney information	James P. Flynn Epstein Becker & Green One Gateway Center Newark, NJ 07102 UNITED STATES jflynn@ebglaw.com Phone:9736398285
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Registration Subject to Cancellation

Registration No	3690108	Registration date	09/29/2009
Registrant	Dilliner, Denise 552 Paulele St Kailua, HI 96734 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2008/08/01 First Use In Commerce: 2008/08/01 Cancelled goods and services in the class: Waterproof jackets and pants; Knit shirts; Rugby shirts; Shirts; Short-sleeved or long-sleeved t-shirts; Sweat shirts; Sweaters; Bathing suits; Dress suits; Jogging suits; Suits; Singlets; Vests; Shawls and headscarves; Blouses; Gloves; Stockings; Dressing gowns; Underwear; Capes; Jeans; Pajamas; Pullovers; Anoraks; Down jackets; Jackets; Wind resistant jackets; Overcoats; Shorts; Skirts; Miniskirts; Socks; Fleece pullovers; Jumpers; Belts; Dresses; Swimwear; Beachwear; Cardigans; Coats; Trousers; Pinafores; Waistcoats; Overalls; Leotards; Leggings; Ties; Footwear; Headgear, namely, hats and baseball caps; Bandanas; Headbands; Leather belts

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Ex A2015-11-20 SOF BRA 02 01 Final Executed.pdf(99534 bytes) Brand Control petition DOC.PDF(50313 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	/James P. Flynn/
Name	James P. Flynn
Date	11/20/2015



M E M O R A N D U M

TO: JAMES P. FLYNN, ESQ.
FROM: JENNIFER BENTHIN
DATE: NOVEMBER 20, 2015
RE: SUMMARY OF FINDINGS REGARDING STRIVE CLOTHING COPMANY

PRIVILEGED AND CONFIDENTIAL
PREPARED UNDER SUPERVISION OF COUNSEL AND
IN ANTICIPATION OF LITIGATION AND/OR IN CONNECTION
WITH OBTAINING ADVICE OF LEGAL COUNSEL

Background:

The Intelligence Group (“TIG”) was tasked with performing investigative research regarding the current status and whereabouts of Strive Clothing Company (“Subject”) on behalf of your client, Brand Control, Ltd. (“Client”). The investigation was requested pursuant to a pending trademark application.

Methodology & Findings:

Prior to engaging TIG, the Client learned that the contact information for Subject was no longer valid. Subject had been operating in a mall in Hawaii but Client reported that they left this location about one year ago or sometime in 2014. The phone number initially thought to be the Subject’s was disconnected.

A potential alternate, phone number (808)396-2025 was provided to TIG for investigation. TIG identified the owner of this number as Hawaiian Isle Yard & Maintenance (“HIYM”); a yard service and maintenance company. Hawaii Department of Commerce and Consumer Affairs (HI DCCA) records for HIYM indicate a mailing address of 552 Paulele Street, Kailua, HI 96734. The registrant of is identified as “Denise Dilliner”. HI DCCA records list the same mailing address for the Subject company. The registrant listed in association with the subject company is “Denise Ann M. Dilliner”.

1545 Route 206
Suite 202
Bedminster, NJ 07921
Phone: 908.901.0112
Fax: 908.901.0115
www.intell-group.com

Property records identify 552 Paulele Street as a single family residence. It was last sold to Samuel R. Dilliner on September 24, 1992 for \$199,585 and is currently valued at \$797,300. Residency records indicate that Denise Dilliner has been living there since that purchase date. Also of note, Samuel and Denise Dilliner filed for Chapter 13 Bankruptcy protection in June of 2000 and again in February of 2013.

Denise Dilliner's personal; Facebook page includes the following passage in the "About Denise" section.

"Strive Clothing Company started back in '08 - as we go thru life one day at a time and have to deal with all of life's goods and not so good---builds us to who we are today.....and at times we just wanted to give up --- but kept going to know that if we give up now we will not get all of the blessings that God intended us to have. As we were going thru each and every day we kept thinking it is not how many times we fall but the getting up that counts..... So thru this "STRIVE CLOTHING COMPANY" was born--- we wanted a clothing line with a positive vibe...we have positive designed clothing along with some Christian designs for the whole family. From Newborn- Infants to 6XL TShirts as well as up to 3XL in Womens- Men's shorts up to 5XL in elastic waist - up to 54 with zipper.. We are also known for our wide assortment of earrings from all around the world - we also carry hats, purses, wallets, and other jewelry items...."

The last post to this page was in September of 2014. Additionally, TIG located social media pages for the subject including a Facebook page and a MySpace page. The most recent post to either site was dated December 2014. Both of these pages include pictures of various products but no shoes were included.

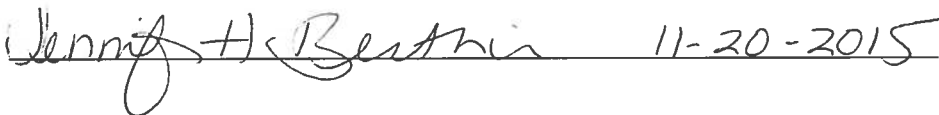
Finally, TIG attempted to contact Subject via the client-provided email address, striveclothingcompany@yahoo.com. An email was sent to this address requesting a catalog. The email was not rejected however; no response has been received to date. Additionally, the website, "striveclothingcompany.com" is no longer an active site.

Conclusions:

Although it is not confirmed, all indications are that the Subject is no longer an active company. It appears that the Subject ceased operations in late 2014. This date coincides with the last posts to the Subject's social media accounts, the owner's social media account, and the information obtained by the client that the Subject left the mall about a year ago.

Additionally, it does not appear that the Subject ever sold shoes. A review of merchandise posted to the Subject social media accounts did not return any images of shoes and the products listed on the owner's Facebook page do not include shoes.

I certify under penalty of perjury that the foregoing is true and correct.

 11-20-2015

In re Petition to Cancel

U.S. Registration No. 3690108

STRIVE

In So Far As It Applies To Shoes/Footwear

On behalf BRAND CONTROL LIMITED, counsel below states as Brand's petition to cancel:

1. On February 27, 2008, Denise Dilliner, an individual, applied for the mark STRIVE in Class 25.
2. That mark registered September 29, 2009, based on evidence of use submitted in April and August 2009.
3. None of submitted specimens included any indication of use in the sale of shoes or footwear.
4. On September 29, 2009, when the mark registered it included a description of goods and services that nonetheless included "footwear":

"Waterproof jackets and pants; Knit shirts; Rugby shirts; Shirts; Short-sleeved or long-sleeved t-shirts; Sweat shirts; Sweat pants; Sweaters; Bathing suits; Dress suits; Jogging suits; Suits; Singlets; Vests; Shawls and headscarves; Blouses; Gloves; Stockings; Dressing gowns; Underwear; Capes; Jeans; Pajamas; Pullovers; Anoraks; Down jackets; Jackets; Wind resistant jackets; Overcoats; Shorts; Skirts; Miniskirts; Socks; Fleece pullovers; Jumpers; Belts; Dresses; Swimwear; Beachwear; Cardigans; Coats; Trousers; Pinafores; Waistcoats; Overalls; Leotards; Leggings; Ties; **Footwear**; Headgear, namely, hats and baseball caps; Bandanas; Headbands; Leather belts. FIRST USE: 20080801.

FIRST USE IN COMMERCE: 20080801 (emphasis added)

5. It appears, as reflected in Ex. A, that the registered mark is not now, and never has been, used in connection with the sale of shoes.

6. Petitioner applied for the mark STRIVE (Serial No. 86357311) for footwear in Class 25 on August 5, 2014 in connection with its shoe and sandal business.

7. Its application has not been granted, with the examiner citing U.S. Registration No. 3690108.

8. Petitioner seeks cancellation of the mark U.S. Registration No. 3690108 only in so far as it applies to footwear.

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Newark, NJ 07102
Attorneys for BRAND CONTROL LIMITED

By: 
James P. Flynn