

ESTTA Tracking number: **ESTTA780337**

Filing date: **11/01/2016**

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	California Cowboy Apparel, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	3618 Webster Street San Francisco, CA 94123 UNITED STATES		

Attorney information	Mary L. Shapiro Evoke Law, PC 244 California Street, Suite 507 San Francisco, CA 94111-4354 UNITED STATES docketing@evoke.law, iplaw@evoke.law Phone: 415-398-3141		
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### Registration Subject to Cancellation

Registration No	4387170	Registration date	08/20/2013
Registrant	Kidd, Andria 10826 Kings Road Ventura, CA 93004 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 025. First Use: 2012/11/01 First Use In Commerce: 2012/11/01 All goods and services in the class are cancelled, namely: Wearable garments and clothing, namely, shirts
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### Grounds for Cancellation

Other	Improperly matured to registration.
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Attachments	Petition to Cancel Andria Kidd CALIFORNIA COWBOY 11-1-2016.pdf(212120 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	/Mary L. Shapiro/
Name	Mary L. Shapiro

Date	11/01/2016
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Registrant: Andria Kidd  
Mark: CALIFORNIA COWBOY  
Reg. No. 4387170  
Registration Date: August 20, 2013

California Cowboy Apparel, Inc.

Petitioner,

v.

Andria Kidd

Respondent.

**Cancellation No.** \_\_\_\_\_

**PETITION TO CANCEL**

**PETITION TO CANCEL**

California Cowboy Apparel, Inc. (“Petitioner”), an corporation organized and existing under the laws of Delaware, with a principal place of business at 3618 Webster Street, San Francisco, California 94123, believes it is being or will be damaged by continued Registration No. 4,387,170 for the mark CALIFORNIA COWBOY, owned by registrant Andria Kidd (“Respondent”), an individual, with a mailing address of 10826 Kings Road, Ventura, California 93004, and hereby petitions to cancel said registration. Trademark Registration No. 4,387,170 (hereinafter “Respondent’s Registration”) is identified as follows:

As grounds for cancellation, Petitioner alleges:

1. Petitioner is the owner of U.S. Trademark Application Serial No. 87/212,308 filed on October 21, 2016, for the mark CALIFORNIA COWBOY in connection with “Handbags; Bottle openers; Shirts; Bottoms; Coats; Coats for men and women; Dresses; Gloves; Jackets; Pants; Shorts; Skirts; Sweaters; Sweatshirts; T-shirts; Tops; Trousers; Vests; Waist belts; Hooded sweatshirts; On-line retail store services featuring clothing, accessories, home goods, and other novelty items” (“Petitioner’s Application”) in International Classes 18, 21, 25, and 35.

2. Since April of 2016, Petitioner has used the mark CALIFORNIA COWBOY in connection with handbags, bottle openers, t-shirts, sweatshirts, coats, and various other apparel items.

3. Petitioner has been, and continues to be, damaged in that Respondent’s Registration grants Respondent the exclusive nationwide right to use the mark CALIFORNIA COWBOY in connection with wearable garments and clothing.

4. Respondent filed an application for the CALIFORNIA COWBOY (Stylized) mark on November 17, 2012 for Wearable garments and clothing, namely, shirts” in International Class 25, alleging first use as of November 1, 2012. Subsequently, Reg. No. 4387170 issued on August 20, 2013.

5. Pursuant to 37 C.F.R. § 2.51(a) and Trademark Manual of Examining Procedure § 807.12(a), the drawing submitted in a trademark application must be a substantially exact representation of the mark as used on or in connection with the goods and services, as shown by the specimen.

6. In Respondent’s then application, Respondent described the applied-for mark as follows: “The mark consists of a man with cowboy hat looking down circled with the words ‘California Cowboy’ arched above.”

7. Below is the drawing submitted to the USPTO in connection with application Serial No. 85/782105 for Respondent’s Mark on November 17, 2012.



8. Below is the specimen of use submitted in connection with Respondent’s Mark on November 17, 2012, in connection with then Applicant’s use-based application:



9. Respondent’s Registration improperly matured to registration because the specimen of use is not a substantially exact representation of Respondent’s Mark.

10. The mark shown in the specimen consists of two cowboy boots, toes forward, with one toe angled towards the other with the wording "California Cowgirl" arched above the boots.

11. Upon information and belief, Respondent is not using Respondent's Mark in connection with "Wearable garments and clothing, namely, shirts."

12. Upon information and belief, Respondent has abandoned Respondent's Mark pursuant to Section 14(3) of the Trademark Act, 15 U.S.C. § 1064(3).

13. Upon information and belief, Respondent has never used, or has discontinued use of the mark shown in Respondent's Registration in connection with "Wearable garments and clothing, namely, shirts" many years ago.

14. Upon information and belief, for at least the last three consecutive years, Respondent has not used Respondent's Mark in connection with "Wearable garments and clothing, namely, shirts," thereby constituting prima facie evidence of abandonment of the CALIFORNIA COWBOY mark as shown in Respondent's Registration.

15. In light of Respondent's non-use and abandonment of Respondent's Mark, Respondent is not entitled to continued registration of the mark pursuant to Section 14(3) of the Trademark Act, 15 U.S.C. § 1064(3), and, as such, Respondent's Registration should be cancelled.

Petitioner reserves the right to amend this Petition to allege other claims in the event discovery of other information indicates they are appropriate.

WHEREFORE, Petitioner prays that Registration No. 4,387,170 be cancelled and this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,



Dated: November 1, 2016

By:

Mary L. Shapiro, Esq.  
Attorney for Petitioner,  
California Cowboy Apparel, Inc.

Evoke Law, PC  
244 California Street, Suite 507  
San Francisco, CA 94111-4354  
Telephone: 415-398-3141  
Email: [iplaw@evoke.law](mailto:iplaw@evoke.law)

**PROOF OF SERVICE BY MAIL**  
**C.C.P. 1013a**

I declare that I am a resident of or employed in the County of San Francisco, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of the business at which I am employed is Evoke Law, PC, 244 California Street, Suite 507, San Francisco, California 94111-4354.

I am readily familiar with the ordinary practice of the business of collecting, processing and depositing correspondence in the United States Postal Service and that the correspondence will be deposited the same day with postage thereon fully prepaid.

On November 1, 2016, I served the PETITION TO CANCEL on the parties listed below by placing a true copy thereof enclosed in a sealed envelope for collection and mailing in the United States Postal Service following ordinary business practices at San Francisco, California addressed as follows:

Andria Kidd  
10826 Kings Road  
Ventura, CA 93004

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on November 1, 2016 at San Francisco, California.

\_\_\_\_\_  
/Eddie Shine/

Eddie Shine