

ESTTA Tracking number: **ESTTA815434**

Filing date: **04/19/2017**

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 parties request to cancel indicated registration.

Petitioner Information

Name	HSNi LLC		
Entity	Limited liability company	Citizenship	Delaware
Address	1 HSN Drive St. Petersburg, FL 33729 UNITED STATES		

Name	HSNi LLC		
Entity	Limited liability company	Citizenship	Delaware
Address	1 HSN Drive St. Petersburg, FL 33729 UNITED STATES		

Attorney information	C. Douglas McDonald Carlton Fields Jordan Burt, PA PO Box 3239 Tampa, FL 33601 UNITED STATES trademarks@carltonfields.com Phone:813-223-7000		
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Registration Subject to Cancellation

Registration No	4339763	Registration date	05/21/2013
Registrant	FERRARA, ANTHONY 14-47 159TH STREET Whitestone, NY 11357 UNITED STATES		

Goods/Services Subject to Cancellation


Class 025. First Use: 2012/10/30 First Use In Commerce: 2012/11/01 All goods and services in the class are cancelled, namely: Shirts, tank tops, fleece tops, sweaters, pants, trousers, jeans, skirts, dresses, undergarments, socks, gloves, hats, swim wear

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Related Proceedings	Cancellation Tracking No. ESTTA815431

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application	86819682	Application Date	11/13/2015
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BELLEZZA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 2012/12/01 First Use In Commerce: 2012/12/01 Jewelry		

Attachments	86819682#TMSN.png(bytes) Petition for Cancellation BELLEZA.pdf(23621 bytes)
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Signature	/C. Douglas McDonald/
Name	C. Douglas McDonald
Date	04/19/2017

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

HSN Holding, LLC.,

Petitioner

v.

Cancellation No. _____

Anthony Ferrara, an Individual,

Respondent.

PETITION FOR CANCELLATION

Petitioner, HSN Holding LLC, believing that it is or will be damaged by the continued registration of the trademark, BELLEZA, U.S. Registration No. 4,339,763, registered on May 21, 2013, and hereby petitions to cancel the same, alleging as follows:

1. Petitioner, HSN Holding LLC is a limited liability company of the state of Delaware, having an address of 1 HSN Drive, Building C, St. Petersburg, Florida 33729.

2. Respondent, Anthony Ferrara ("Ferrara"), upon information and belief, is an individual, having an address of 14-47 159th Street, Whitestone, New York 11367.

3. Respondent obtained registration of the trademark BELLEZA in International Class 25 on May 21, 2013, as registration number 4,339,763 (the "763 Registration").

4. On information and belief, Respondent is the current owner of the '763 Registration.

5. Respondent represents that it has used the mark of the '763 Registration in connection with:

Shirts, tank tops, fleece tops, sweaters, pants, trousers, jeans, skirts, dresses, undergarments, socks, gloves, hats, and swimwear

in International Class 25, with a claimed date of first use of October 30, 2012, and date of first use in commerce of November 1, 2012.

6. Respondent's predecessor in interest, HSNi LLC, filed an application to register the mark BELLEZZA for jewelry, in International Class 14 on May 12, 2004, as application serial number 78/417,416. This application claimed a date of first use in September of 2004. This application matured into U.S. Registration 3,036,772 (the "772 Registration") on December 27, 2005.

7. Petitioner has used the trademark BELLEZZA in connection with the sale of jewelry in interstate commerce continuously from at least as early as 2011 through the present.

9. Petitioner, through its related company HSNi LLC, filed an application for registration of the trademark BELLEZZA in International Class 14 for jewelry, as application serial number 86/819,682 (the "682 Application") on November 13, 2015, claiming a date of first use of December 1, 2012. HSNi LLC subsequently assigned the '682 Application to Petitioner. Petitioner subsequently determined that the mark BELLEZZA had been in continuous use by Petitioner, through its related companies, since at least as early as 2011. Petitioner has so amended the '682 Application.

10. In an Office Action dated March 10, 2016, the Trademark Examining Attorney refused registration of the '682 Application on the basis, *inter alia*, of an alleged likelihood of confusion under Section 2(d) with respect to the '763 Registration. The Examining Attorney asserted that "[t]he goods of the parties need not be identical or even competitive to find a likelihood of confusion,"... further asserting that "even if the goods in question are different from and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods." The Examining Attorney further asserted

that “[t]he respective goods need only be ‘related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.’”

11. The Examining Attorney noted that applicant was seeking registration for jewelry within Class 14, while the '763 Registration is for various types of clothing within Class 25. The Trademark Examining Attorney asserted that attachments to the Office Action “consist of excerpts from retailer’s websites offering both jewelry and shirts, tank tops, fleece tops, sweaters, pants, trouser, jeans, skirts, dresses, undergarments, socks, gloves, hats, or swimwear.” The Examining Attorney further asserted that “this evidence establishes that the same entity commonly manufactures or provides the relevant goods and markets the goods under the same mark. Therefore, applicant’s and registered goods are considered related for likelihood of confusion purposes.”

12. Petitioner has been using its BELLEZZA mark as a trademark for jewelry since at least as early as 2011, well prior to the date of first use of Respondent’s mark.

13. Petitioner will be injured by the continued registration of the trademark BELLEZZA by Respondent in that Petitioner’s own application for registration of a similar mark has been refused registration as being confusingly similar, thereby depriving Petitioner of the benefit from the use and registration of said mark.

14. **WHEREFORE**, Petitioner prays that registration 4,339,763 be canceled in its entirety, and at this petition for cancellation be sustained in favor of Petitioner.

Dated January ____, 2017.

Respectfully submitted

C. Douglas McDonald
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Tampa, FL 33607
Telephone (813)223-7000
Email: dmcDonald@carltonfields.com
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby CERTIFY that I have served the foregoing on the owner of record for the above identified registration:

Anthony Ferrara
14-47 159th St.
Whitestone, New York 11357

via First Class United States' Mail (Certified) deposited with United States Postal Service on January ____, 2017.

C. Douglas McDonald
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Attorney for Petitioner