

ESTTA Tracking number: **ESTTA943549**

Filing date: **12/21/2018**

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

Proceeding	92069219
Party	Defendant Allbirds, Inc.
Correspondence Address	ALLBIRDS INC 730 MONTGOMERY ST SAN FRANCISCO, CA 94111 UNITED STATES no email provided no phone number provided
Submission	Motion for Relief from entry of Default Judgment
Filer's Name	Ariana G. Hiscott
Filer's email	ahiscott@cooley.com, trademarks@cooley.com, PECKAH@cooley.com
Signature	/Ariana G. Hiscott/
Date	12/21/2018
Attachments	WOOL RUNNERS - Motion to Set Aside Judgment - Answer - Declarations - Dec 21 2018.pdf(357618 bytes)

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

In the Matter of Registration No. 5149527 WOOL RUNNERS

GIESSWEIN WALKWAREN AG

Petitioner,

v.

ALLBIRDS, INC.

Respondent.

Cancellation No. 92069219

MOTION FOR RELIEF FROM JUDGMENT UNDER FED. R. CIV. P. 60(B)

Pursuant to Fed. R. Civ. P. 60(b), Allbirds, Inc. (“Respondent”) hereby respectfully requests that the Trademark Trial and Appeal Board (the “Board”) vacate the default judgment issued on November 20, 2018 in Cancellation No. 92069219 for failure to answer the petition to cancel filed by Giesswein Walkwaren AG (“Petitioner”) against WOOL RUNNERS, U.S. Reg. No. 5149527.

Respondent requests that the judgment be vacated and that Respondent be given the opportunity to respond to the petition to cancel on the basis that (1) the Petitioner will not be prejudiced, (2) the default was not willful as Respondent did not receive notice of the Petition to Cancel or any subsequent order by the Board, (3) Respondent is taking prompt action upon learning of the cancellation, (4) Respondent has a meritorious defense to the Petition to Cancel, (4) the default judgment would produce a hard or unfair result, and other reasons establishing good cause therefore.

1. Factual Background

As documented in the enclosed declarations, Respondent did not receive notification of the Petition to Cancel filed by Giesswein Walkwaren AG (“Petitioner”) on August 10, 2018, or the subsequent notifications and orders issued in Cancellation No. 92069219, namely, the Notice of Institution (issued August 15, 2018), Notice of Default (issued October 4, 2018), Judgment of Default (issued November 20, 2018), or Order Cancelling Reg. No. 5149527 (issued November 21, 2018).

According to the history shown on the Trademark Trial and Appeal Board Inquiry System, Petitioner filed the Petition to Cancel on August 10, 2018 and, as shown on the Certificate of Electronic Transmission, only transmitted the Notice of Opposition to the Trademark Trial and Appeal Board. A courtesy copy was not sent to counsel for Allbirds, Inc., despite the fact that trademark counsel for Petitioner and Respondent had previously had communications regarding Petitioner’s use of MERINO RUNNERS on May 10, 2017.

The Board then issued a Notice of Institution and addressed it only to ALLBIRDS INC. 730 Montgomery St. San Francisco, CA 94111. The Board issued a Notice of Default on October 4, 2018, a Judgment by Default on November 20, 2018 and an Order Cancelling the Registration on November 21, 2018. However, no address is shown on any of these orders so it is unclear if these were mailed to Respondent. Also, Allbirds, Inc. is shown as “pro se” on the Order Cancelling the Registration, which confirms Respondent’s counsel was not notified of any of the filings or orders in Cancellation No. 92069219.

Registrant’s trademark counsel discovered the Judgment of Default and Order Cancelling Reg. No. 5149527 on December 11, 2018 during a routine check of Allbirds, Inc.’s WOOL RUNNER registration and spoke to Eric McWilliams, supervising paralegal at the Trademark Trial and Appeal Board, the same day. Respondent’s counsel alerted Respondent on December 12, 2018 regarding the cancellation and confirmed no mailings or notices were received regarding Cancellation No. 92069219.

2. Legal Background

As stated in Section 544 of the Trademark Trial and Appeal Board Manual of Procedure (TBMP), default judgments for failure to timely answer the complaint are not favored by the law. As such, a motion under Fed. R. Civ. P. 55(c) or 60(b) seeking relief from such a judgment is generally treated with more liberality by the Board than are other motions under Fed. R. Civ. P. 60(b) for relief from other types of judgments such as default judgments entered against plaintiffs for failure to prosecute the case.

Pursuant to Fed. R. Civ. P. 60(b), the Board may set aside or vacate a final judgment for any of the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Here, neither Respondent nor its trademark counsel received notice of Cancellation No. 92069219. Respondent previously responded to Cancellation Action No. 92067886 against WOOL RUNNERS Reg. No. 5149527 and would have similarly responded to this ‘219 cancellation had it received proper notice. Also, Respondent’s trademark counsel had previously been in communication with trademark counsel for Petitioner, but did not receive a courtesy copy. Counsel for Petitioner did not make any efforts to advise Respondent’s known trademark counsel and instead allowed the Notice of Default to stand unchallenged. As Respondent and its trademark

counsel did not receive notice of the Petition to Cancel or any of the subsequent orders in Cancellation No. 92069219, the Board's judgment and order cancelling Respondent's registration for WOOL RUNNERS was a surprise.

Per Fed. R. Civ. P. 60(c)(1), motions made under Rule 60(b) must be made within a reasonable time, and for reasons (1), (2), and (3) no more than a year after the entry of the judgment order or the date of the proceeding. Respondent's motion is being made only ten days after discovering the cancellation of its WOOL RUNNERS registration and thus is both prompt and timely.

3. Conclusion

Given that default judgments for failure to timely answer the complaint are not favored by the law, and also given that Petitioner will not be prejudiced, Respondent's default was not willful and Respondent is taking prompt action upon learning of the cancellation, Respondent has a meritorious defense to the petition to cancel, the default judgment would produce a hard or unfair result, and other reasons establishing good cause, Allbirds, Inc. respectfully requests that the Board vacate its order cancelling WOOL RUNNERS, US Reg. No. 5149527 and reinstitute the Cancellation Action No. 92069219 to allow Respondent to answer the Petition to Cancel.

Respondent has here attached an Answer to Cancellation Action No. 92069219 as well as supporting declarations from Daniel Li, Head of Legal at Allbirds, Inc. and Ariana G. Hiscott, trademark counsel for Allbirds, Inc.

Dated: December 21, 2018

COOLEY LLP

BY: *Ariana G. Hiscott*

Anne. H. Peck, Esq.
Ariana G. Hiscott, Esq.
Cooley LLP

1299 Pennsylvania Avenue NW Suite 700
Washington, DC 20005
Tel: 415-693-2171

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

In the Matter of Registration No. 5149527 WOOL RUNNERS

GIESSWEIN WALKWAREN AG

Petitioner,

v.

ALLBIRDS, INC.

Respondent.

Cancellation No. 92069219

**DECLARATION OF ARIANA G. HISCOTT IN SUPPORT OF
MOTION FOR RELIEF FROM JUDGMENT UNDER FED. R. CIV. P. 60(B)**

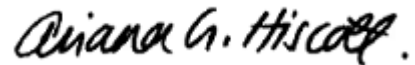
I, Ariana G. Hiscott, hereby declare as follows:

1. I am an attorney admitted to practice in California and an associate with the law firm of Cooley LLP, counsel of record for Allbirds, Inc. (“Respondent”). Unless otherwise stated, I have personal knowledge of the facts set forth in this declaration and, if called to testify as a witness, could and would testify competently thereto.
2. I became aware on December 11, 2018 that the registration for WOOL RUNNERS (US Reg. No. 5149527) had been cancelled when I accessed the record for WOOL RUNNERS via the Trademark Status & Document Retrieval System (TSDR). Attached as Exhibit A is a printout from the TSDR record I accessed, viewed and printed at 12:04 AM Pacific/3:04:27 AM Eastern.
3. Upon learning the registration had been cancelled, I reviewed my e-mail for any emails from either the Trademark Trial and Appeal Board (TTAB) or from an address containing “@pattishall,” which would have been from Petitioner’s trademark counsel, whom I had last corresponded with on May 10, 2017. I also corresponded with our docketing department to confirm that Cooley LLP had not received any correspondence from the TTAB regarding the WOOL RUNNERS mark.
4. On December 11, 2018, I spoke with Eric McMillian, supervising paralegal at the TTAB to clarify where the notices had been mailed and he confirmed the TTAB would have mailed the notice to Allbirds, Inc. at the postal address of record and would not have used the authorized e-mail address listed for Allbirds, Inc., which was set to trademarks@cooley.com.

5. On December 12, 2018, I, together with Anne H. Peck, corresponded with Daniel Li, head of legal at Allbirds, Inc. regarding the status of WOOL RUNNERS, US Reg. No. 5149527.
6. On December 12, 2018, Anne H. Peck confirmed to me that she spoke to Daniel Li, Head of Legal at Allbirds, Inc. via telephone and Mr. Li confirmed that Allbirds, Inc. had not received any notice regarding the Petition to Cancel or any of the subsequent TTAB orders issued in the cancellation action against WOOL RUNNERS, US Reg. No. 5149527.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed at San Francisco, California.

Date: December 21, 2018



Ariana G. Hiscott
Ariana G. Hiscott
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101 California St., Floor 5
San Francisco, CA 94111
ahiscott@cooley.com
Tel: (415) 693-2171
Trademark counsel for Allbirds, Inc.

EXHIBIT A

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Mark: WOOL RUNNERS

WOOL RUNNERS

US Serial Number: 87002872

Application Filing Date: Apr. 15, 2016

US Registration Number: 5149527

Registration Date: Feb. 28, 2017

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

Status: Registration cancelled under Section 18 by the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Nov. 21, 2018

Publication Date: Dec. 13, 2016

Date Cancelled: Nov. 21, 2018

Mark Information

Mark Literal Elements: WOOL RUNNERS

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Disclaimer: "WOOL"

Related Properties Information

International Registration Number: 1333012

International Application(s) /Registration(s) Based on this Property: A0062272/1333012

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Footwear made of wool

International Class(es): 025 - Primary Class

U.S Class(es): 022, 039

Class Status: SECTION 18 - CANCELLED

Basis: 1(a)

First Use: Feb. 29, 2016

Use in Commerce: Feb. 29, 2016

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: ALLBIRDS, INC.

Owner Address: 730 Montgomery Street
San Francisco, CALIFORNIA 94111
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Anne H. Peck

Attorney Primary Email Address: trademarks@cooley.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: ALLBIRDS INC
730 MONTGOMERY ST
SAN FRANCISCO, CALIFORNIA 94111
UNITED STATES

Phone: (650) 843-5096

Fax: (650) 849-7400

Correspondent e-mail: trademarks@cooley.com peckah@cooley.com ahi@cooley.com scott@cooley.com cnathan@cooley.com eortiz@cooley.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Nov. 21, 2018	CANCELLED SECTION 18-TOTAL	
Nov. 21, 2018	CANCELLATION TERMINATED NO. 999999	69219
Nov. 20, 2018	CANCELLATION GRANTED NO. 999999	69219
Aug. 15, 2018	CANCELLATION INSTITUTED NO. 999999	69219
May 11, 2018	TTAB RELEASE CASE TO TRADEMARKS	67886
May 11, 2018	CANCELLATION TERMINATED NO. 999999	67886
May 11, 2018	CANCELLATION DENIED NO. 999999	67886
Feb. 12, 2018	CANCELLATION INSTITUTED NO. 999999	67886
Feb. 28, 2017	REGISTERED-PRINCIPAL REGISTER	
Dec. 13, 2016	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Dec. 13, 2016	PUBLISHED FOR OPPOSITION	
Nov. 23, 2016	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Nov. 01, 2016	APPROVED FOR PUB - PRINCIPAL REGISTER	
Nov. 01, 2016	EXAMINER'S AMENDMENT ENTERED	88888
Nov. 01, 2016	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Nov. 01, 2016	EXAMINERS AMENDMENT E-MAILED	6328
Nov. 01, 2016	EXAMINERS AMENDMENT -WRITTEN	77876
Oct. 14, 2016	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Oct. 14, 2016	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Oct. 08, 2016	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Oct. 07, 2016	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Oct. 07, 2016	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Aug. 01, 2016	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325

Aug. 01, 2016	NON-FINAL ACTION E-MAILED	6325
Aug. 01, 2016	NON-FINAL ACTION WRITTEN	77876
Aug. 01, 2016	ASSIGNED TO EXAMINER	77876
Apr. 20, 2016	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 19, 2016	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TTAB

Date in Location: Nov. 21, 2018

Proceedings

Summary

Number of Proceedings: 2

Type of Proceeding: Cancellation

Proceeding Number: [92069219](#)

Filing Date: Aug 10, 2018

Status: Terminated

Status Date: Nov 21, 2018

Interlocutory Attorney: ANN LINNEHAN VOGLER

Defendant

Name: Allbirds, Inc.

Correspondent Address: ALLBIRDS INC
730 MONTGOMERY ST
SAN FRANCISCO CA , 94111
UNITED STATES

Associated marks

Mark	Application Status	Serial Number	Registration Number
WOOL RUNNERS	Cancelled - Section 18	87002872	5149527

Plaintiff(s)

Name: Giesswein Walkwaren AG

Correspondent Address: KRISTINE A BERGMAN
PATTISHALL MCAULIFFE NEWBURY HILLIARD & GERALDSON LLP
200 SOUTH WACKER DR , STE 2900
CHICAGO IL , 60606
UNITED STATES

Correspondent e-mail: pb@pattishall.com , sia@pattishall.com , kab@pattishall.com , jin@pattishall.com , lrb@pattishall.com , lkn@pattishall.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
GIESSWEIN MERINO RUNNERS	Registered	79210108	5326486

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Aug 10, 2018	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Aug 15, 2018	Sep 24, 2018
3	INSTITUTED	Aug 15, 2018	
4	NOTICE OF DEFAULT	Oct 04, 2018	
5	BD DECISION: CAN GRANTED	Nov 20, 2018	
6	COMMR ORDER CANCELLING REG	Nov 21, 2018	
7	TERMINATED	Nov 21, 2018	

Type of Proceeding: Cancellation

Proceeding Number: [92067886](#)

Filing Date: Feb 07, 2018

Status: Terminated

Status Date: May 11, 2018

Interlocutory Attorney: KATIE W MCKNIGHT

Defendant

Name: Allbirds, Inc.

Correspondent Address: CYNTHIA O SMUZYNSKA
COOLEY LLP
1299 PENNSYLVANIA AVENUE NW SUITE 700
WASHINGTON DC , 20005
UNITED STATES

Correspondent e-mail: csmuzynska@cooley.com , trademarks@cooley.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
WOOL RUNNERS	Cancelled - Section 18	87002872	5149527

Plaintiff(s)

Name: Steven Madden, Ltd.

Correspondent Address: SUSAN A SMITH
HUNTON ANDREWS KURTH LLP
1350 I STREET NW SUITE 1100
WASHINGTON DC , 20005
UNITED STATES

Correspondent e-mail: jcohennowak@andrewskurthkenyon.com , SSmith@HuntonAK.com

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Feb 07, 2018	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Feb 12, 2018	Mar 24, 2018
3	PENDING, INSTITUTED	Feb 12, 2018	
4	D MOT FOR EXT W/ CONSENT	Mar 21, 2018	
5	EXTENSION OF TIME GRANTED	Mar 28, 2018	
6	D MOT FOR EXT W/ CONSENT	Apr 23, 2018	
7	EXTENSION OF TIME GRANTED	Apr 23, 2018	
8	W/DRAW OF PET FOR CANCELLATION	May 03, 2018	
9	BD DECISION: DISMISSED W/O PREJ	May 11, 2018	
10	TERMINATED	May 11, 2018	

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

In the Matter of Registration No. 5149527 WOOL RUNNERS

GIESSWEIN WALKWAREN AG

Petitioner,

v.

ALLBIRDS, INC.

Respondent.

Cancellation No. 92069219

**DECLARATION OF DANIEL LI IN SUPPORT OF
MOTION FOR RELIEF FROM JUDGMENT UNDER FED. R. CIV. P. 60(B)**

I, Daniel Li, hereby declare as follows:

1. I am the head of legal for Allbirds, Inc. (“Respondent”) and have been employed as head of legal since March 5, 2018. I am familiar with how mailed correspondence is received and processed at Allbirds, Inc.. Unless otherwise stated, I have personal knowledge of the facts set forth in this declaration and, if called to testify as a witness, could and would testify competently thereto.
2. On December 12, 2018, I was informed by our trademark counsel, Anne H. Peck and Ariana G. Hiscott that the registration for WOOL RUNNERS (US Reg. No. 5149527) had been cancelled by the Trademark Commissioner due to a default judgment issued by the Trademark Trial and Appeal Board (TTAB) for failure to answer the petition to cancel.
3. Physical correspondence, including first-class mail from the U.S. Postal Service, addressed to Allbirds, Inc. at 730 Montgomery St., San Francisco, CA is received by the assigned receptionist on the first floor of Allbirds’ physical office space located at 730 Montgomery St., San Francisco, CA. Receptionist duties at Allbirds are rotated amongst its employees, who are given written instructions attached here as Exhibit A, on how to receive and distribute physical mail. Physical mail from the US Patent and Trademark Office (USPTO) and/or the TTAB would have been distributed to me, as Head of Legal.
4. As of December 12, 2018, when I was informed by my trademark counsel that the registration for WOOL RUNNERS had been cancelled by the TTAB, I had not received any electronic or physical mail correspondence from the USPTO, the TTAB, from Petitioner’s U.S. law firm, Pattishall McAuliffe, or from Petitioner, Giesswein Walkwaren AG regarding Cancellation No. 92069219.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed at San Francisco, California.

Date: December 20, 2018



Daniel Li
Head of Legal
Allbirds, Inc.
730 Montgomery St. SF, CA 94111

193910358

EXHIBIT A

Rotating Receptionist

Congrats! You get to be the face of Allbirds HQ today!

Tasks include:

- Being the gatekeeper to HQ
 - Use the wireless remote to open the door for guests

- Greet guests
 - Offer water and have them wait downstairs
 - Refill the water filter at the beginning of shift; cups are in the downstairs kitchen
 - Utilize iPad
 - Password: bird
 - Use the RingCentral App to text HQ employee that their guest has arrived [phone #: [415] 870- 3371]
 - OR use Allbirds Slack to notify others

- Ensure outgoing mail is sent
 - We have both FedEx Ground and Express pick ups in the afternoon, so make sure all outbound mail gets picked up
 - Outbound mail goes in/on top of the white bins
 - Incoming mail can go on the wool table

- Receive incoming mail
 - Disperse mail at the end of shift to employees

- Make sure front door is fully closed behind guests, employees and yourself!
-
- Downstairs DJ!
 - Use the Sonos App on iPad to play what you want!

Have fun!

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

In the matter of Registration No. 5,149,527
For the Trademark WOOL RUNNERS
Registered on Feb. 28, 2017

GIESSWEIN WALKWAREN AG,)	
)	
Petitioner,)	
)	
v.)	Cancellation. No. 92069219
)	
ALLBIRDS, INC.,)	
)	
Respondent.)	
)	
)	
)	

RESPONDENT ALLBIRDS, INC.’S ANSWER TO PETITION FOR CANCELLATION

In response to the Petition for Cancellation filed by Giesswein Walkwaren AG (“Petitioner”) regarding U.S. Reg. No. 5,149,527 for the WOOL RUNNERS trademark registered and used by Respondent Allbirds, Inc. (“Allbirds”), Allbirds hereby answers as set forth below. Unless specifically admitted, Allbirds denies each of the allegations in the Petition for Cancellation.

1. Allbirds admits that Petitioner is engaged in the sales of footwear. Allbirds lacks information and knowledge sufficient to form a belief as to the meaning of Petitioner’s “interest” as set forth in Paragraph 1 and on that basis denies such allegations. Except as expressly admitted, Allbirds denies the allegations in Paragraph 1.

2. Allbirds admits that the U.S. Patent and Trademark Office’s (“USPTO”) Trademark Status & Document Retrieval (“TSDR”) records currently identify Petitioner as the

registrant of U.S. Registration No. 5,326,486, and that no further response is necessary because the TSDR record speaks for itself.

3. Allbirds admits that Allbirds registered the WOOL RUNNERS mark in connection with the goods identified in the registration issued to Allbirds, which speaks for itself. Allbirds further admits that the TSDR records of the USPTO reflect that Allbirds included a disclaimer for the term “WOOL” apart from the mark as shown.

4. Allbirds denies the allegations in Paragraph 4.

5. Allbirds admits that the TSDR records of the USPTO reflect that Allbirds included a disclaimer for the term “WOOL” in the registration issued to Allbirds for the mark WOOL RUNNERS. Allbirds denies the remaining allegations in Paragraph 5.

6. Allbirds denies the allegations in Paragraph 6.

7. Allbirds denies the allegations in Paragraph 7.

8. Allbirds denies the allegations in Paragraph 8.

AFFIRMATIVE DEFENSES

In addition to the Answer set forth above, Allbirds asserts the following affirmative defenses, without assuming the burden of proof on such defenses that would otherwise fall on Petitioner.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. Petitioner has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Lack of Standing)

2. Petitioner lacks standing to seek cancellation of registration of the WOOL RUNNERS mark in that Petitioner is not likely to be damaged by the continued registration of the Mark.

Dated: December 21, 2018

COOLEY LLP

BY: *Ariana G. Hiscott*

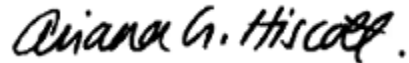
Anne. H. Peck, Esq.
Ariana G. Hiscott, Esq.
Cooley LLP
1299 Pennsylvania Avenue NW Suite 700
Washington, DC 20005
Tel: 415-693-2171

194607817

CERTIFICATE OF TRANSMITTAL

I hereby certify that this **REGISTRANT'S ANSWER AND AFFIRMATIVE DEFENSES, MOTION FOR RELIEF FROM JUDGMENT UNDER FED. R. CIV. P. 60(B), DECLARATION OF ARIANA G. HISCOTT IN SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT UNDER FED. R. CIV. P. 60(B)** and **DECLARATION OF DANIEL LI IN SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT UNDER FED. R. CIV. P. 60(B)** are being electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA) on the date indicated below.

Date: December 21, 2018



Ariana G. Hiscott