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

Proceeding	92070872
Party	Plaintiff Dillard's, Inc.
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Attachments	Flying Star -- Memorandum in Opposition to Response to Registrant Response to Notice of Default.pdf(41392 bytes)

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

DILLARD'S INC.)	
)	
Petitioner)	
)	
v.)	Cancellation No. 92070872
)	
FLYING STAR LLC)	
)	
Registrant)	

MEMORANDUM IN RESPONSE TO
REGISTRANT'S RESPONSE TO
THE BOARD'S NOTICE OF DEFAULT

In this proceeding, Petitioner seeks to cancel Registration No. 5,538,978 of the mark SOLARIS which issued on August 14, 2018 for “outdoor apparel, namely, headwear and outdoor apparel, namely, gloves.” Cancellation is sought based on Petitioner’s prior use and registration of the identical mark SOLARIS in connection with various articles of clothing.

The Petition for Cancellation was filed online on March 20, 2019, and identified the Registrant as Flying Star LLC, a Delaware limited liability company located at 13200 Estrella Avenue, Unit A, Gardena, California. In accordance with TBMP 309.02(c)(2)(a), the Petition for Cancellation did not include a certificate of service directed to the Registrant. As noted in 37 C.F.R. 2.113:

“When a petition for cancellation is in proper form . . . has been filed and the correct fee has been submitted, the Trademark Trial and Appeal Board shall prepare a notice of institution which shall identify the proceeding as a cancellation, the number of the proceeding, and the registration(s) involved, and

shall designate a time, not less than thirty days from the mailing date of the notice, within which an answer must be filed. This notice, which will include a web link or web address to access the electronic record, constitutes service to the registrant of the petition to cancel.” (Emphasis added)

Accordingly, the default in this proceeding is not due to the fact that Petitioner did not directly serve the Petition for Cancellation on Registrant or its counsel because such service is not required.

The Notice of Institution of this proceeding was issued by the Board on March 21, 2019, and provides that the due date for the Answer to the Petition for Cancellation is April 30, 2019. The Notice of Institution was mailed to Registrant at its address in Gardena, California as shown in the Notice, which is the only address for Registrant of record in the registration file.

As Registrant did not file any Answer by the April 30, 2019 due date, the Board issued a Notice of Default on May 10, 2019. A Response to the Notice of Default was filed by Registrant’s counsel on June 6, 2019, which states *inter alia* that counsel did not receive the Notice of Institution that was prepared by the Board and mailed to Registrant. However, the Declaration of Buddy Cheng in support of Registrant’s Response to the Notice of Default does not state that Registrant *never* received the Board’s original mailing, but simply that when Registrant did receive the Notice of Institution and Notice of Default, they were forwarded to counsel for Registrant on May 31, 2019. In this regard, it is interesting to note that Mr. Cheng merely states in ¶ 3 of his Declaration that “[t]he Petition to Cancel and Notice of Default were mailed to Flying Star’s previous address and therefore, we received the documents well after they had been sent. . . .” But Respondent does not state when/if the original instituting Notice

was received; but simply that "... Respondent has never received a Petition to Cancel its registrations and therefore, is inexperienced in this type of matter".

In light of the foregoing, Petitioner questions Registrant's statement of facts as well as the implication of Registrant's counsel that the absence of a certificate of service in the Petition for Cancellation is the reason for Registrant's default. As indicated above, a certificate of service clearly is not required to be included in a Petition for Cancellation.

Respectfully submitted,
DILLARD'S INC.

Dated: June 19, 2019

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Certificate of Service

It is hereby certified that a true copy of the foregoing Memorandum in Response to Registrant's Response to the Board's Notice of Default was served on the following counsel of record for Registrant by email transmission this 19th day of June 2019:

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