

ESTTA Tracking number: **ESTTA1242563**

Filing date: **10/19/2022**

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 has filed a petition to cancel the registration indicated below.

Petitioner information

Name	Macy's IP Holdings, LLC		
Entity	Limited Liability Company	Citizenship	Ohio
Address	7 WEST SEVENTH STREET CINCINNATI, OH 45202 UNITED STATES		
Attorney information	CHESTER ROTHSTEIN AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 PARK AVENUE NEW YORK, NY 10016 UNITED STATES Primary email: ptodocket@arelaw.com 2123368000		
Docket no.	33754/2273		

Registration subject to cancellation

Registration no.	5416389	Registration date	03/06/2018
Register	Principal		
Registrant	Jinhua Shubang Commodity LLC. NO.16 YIXIANG STREET CHENGXI STREET YIWU ZHEJIANG, 321000 CHINA		

Goods/services subject to cancellation

Class 024. First Use: Jun 1, 2017 First Use In Commerce: Jun 1, 2017 All goods and services in the class are subject to cancellation, namely: Bath linen; Bath mitts; Blankets for household pets; Cloths for removing make-up; Cotton fabrics; Fabrics for textile use; Face towels of textile; Gift wrap of textile; Hand towels of textile; Handkerchiefs of textile; Jersey fabrics for clothing; Knitted fabric; Rayon fabric; Towels; Travelling rugs
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Grounds for cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Abandonment	Trademark Act Section 14(3)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Mark cited by petitioner as basis for cancellation

U.S. application no.	90865480	Application date	08/04/2021
Register	Principal		
Registration date	NONE	Foreign priority date	NONE
Word mark	RAPIDRY		
Design mark			
Description of mark	NONE		
Goods/services	Class 025. First use: First Use: Jan 10, 2004 First Use In Commerce: Jan 10, 2004 Performance tops, shirts, performance bras, performance jackets, performance leggings, performance bike shorts, performance skorts		

Attachments	Petition to Cancel Jinhua Shubang Commodity.pdf(310565 bytes)
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Signature	/Chester Rothstein/
Name	Chester Rothstein
Date	10/19/2022

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

In the Matter of
Registration No. 5,416,389
For the Mark: RAPID DRY
Issued on: March 6, 2018

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Macy's IP Holdings, LLC :
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 : Cancellation No. _____
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 : Petitioner, :
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 : v. :
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 : Jinhua Shubang Commodity LLC :
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 : Registrant :
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PETITION TO CANCEL

Petitioner, Macy's IP Holdings, LLC, a limited liability company organized and existing under the laws of the state of Ohio, with a principal place of business at 7 West Seventh Street, Cincinnati OH 45202 ("**Petitioner**" or "**Macy's**"), believes it will be damaged by the registration of the mark "RAPID DRY" (the "**RAPID DRY Mark**") in Registration No. 5,416,389 (the "**Jinhua Shubang Registration**"), by Jinhua Shubang Commodity LLC ("**Jinhua Shubang**"), a limited liability company of China, with an address listed in the records of the U.S. Patent and Trademark Office for the Jinhua Shubang Registration of "No.16 Yixiang Street Chengxi Street Yiwu Zhejiang CHINA 321000". The Jinhua Shubang Registration covers the following goods in International Class 24:

Bath linen; Bath mitts; Blankets for household pets; Cloths for removing make-up; Cotton fabrics; Fabrics for textile use; Face towels of textile; Gift wrap of textile; Hand towels of textile; Handkerchiefs of textile; Jersey fabrics for clothing; Knitted fabric; Rayon fabric; Towels; Travelling rugs.

(collectively and individually, “**Jinhua Shubang’s Goods**”). Petitioner hereby petitions to cancel the Jinhua Shubang Registration under 15 U.S.C. §1064 et seq.

STATEMENT OF THE FACTS

1. Since long prior to the filing date of the Jinhua Shubang Registration, Petitioner has extensively used, advertised, and promoted the mark RAPIDRY (the “**RAPIDRY Mark**”) for a wide variety of goods in international Class 25, including but not limited to men’s shirts, performance tops, shirts, performance bras, performance jackets, performance leggings, performance bike shorts, and performance skorts (collectively and individually, “**Petitioner’s Goods**”).

2. Petitioner’s first use of the RAPIDRY Mark in United States commerce was approximately twenty (20) years ago, in or about January of 2004.

3. Upon information and belief, Macy’ RAPIDRY Mark is a portmanteau of the two word mark of the “RAPID DRY Mark, namely RAPID and DRY, such that the relevant public would consider the RAPIDRY Mark and the RAPID DRY Mark to be the same mark.

4. Upon information and belief, Petitioner’s Goods, including but not limited to “Performance tops, shirts, performance bras, performance jackets, performance leggings, performance bike shorts, performance skorts,” are closely related to Jinhua Shubang’s Goods, including but not limited to “Towels”.

5. Petitioner is the owner of U.S. Trademark Application Serial No. 90/865,480, filed on or about August 4, 2021, for the RAPIDRY Mark for Petitioner’s Goods (“**Petitioner’s Application**”).

6. Petitioner's Application received a first Office Action on April 20, 2022, which rejected the Application, *inter alia*, under Section 2(d) of the Act, based on a likelihood of confusion with Jinhua Shubang's Registration.

7. Petitioner's Application is valid and subsisting. A true and correct print-out from the electronic database provided by the U.S. Patent and Trademark Office showing the current status and title of the Petitioner's Application is attached as Exhibit A and is incorporated in this Paragraph by reference and for purpose of reliance.

8. Substantial resources, time, and effort have been expended in connection with the promotion of the products, and protecting the RAPIDRY Mark. As a result of these extensive investments, Petitioner has built up significant recognition in relation to its products offered under the RAPIDRY Mark, acquiring great value as an identifier of Petitioner's goods and as a way of distinguishing Petitioner's goods from those of others. The RAPIDRY Mark is well-known throughout the United States as a distinctive symbol of Petitioner's goodwill.

9. Petitioner's rights in the RAPIDRY Mark and Petitioner's Application are in full force and effect, and are valid, subsisting, and have never been abandoned.

10. Petitioner has extensively promoted its services United States commerce under the RAPIDRY Mark. Petitioner has devoted substantial time, effort, and money in the establishment and maintenance of high standards of quality for the services offered and marketed under the RAPIDRY Mark. As a result, Petitioner has established substantial recognition and secondary meaning in the RAPIDRY Mark, which identifies Petitioner's services and represents the valuable goodwill of Petitioner in its business.

11. On or about July 17, 2017, Jinhua Shubang filed the Application which became the Jinhua Shubang Registration under Section 1(a) of the Trademark Act.

12. The Jinhua Shubang Registration alleges the date of June 1, 2017 as Jinhua Shubang's first date of use anywhere, and also its first date of use in U.S. Commerce of the goods listed in the Jinhua Shubang Registration.

13. Upon information and belief, Jinhua Shubang's earliest priority date from the Jinhua Shubang Registration for the RAPID DRY Mark is June 1, 2017.

14. The goods covered by the Jinhua Shubang Registration are related to Petitioner's Goods offered for sale and sold under the RAPIDRY Mark.

15. The goods covered by the Jinhua Shubang Registration under the RAPID DRY Mark are closely related and/or related to the goods offered by Petitioner in connection with Petitioner's RAPIDRY Mark.

16. The RAPIDRY Mark has been promoted and used in United States Commerce by Petitioner since long prior to June 1, 2017, which is the date of the date alleged by Jinhua Shubang in the Application which became the Jinhua Shubang Registration, as the first date of use in U.S. Commerce, and upon information and belief is the earliest priority date in the Jinhua Shubang.

COUNT I

LIKELIHOOD OF CONFUSION UNDER SECTION 2(d)

17. Petitioner repeats and realleges each and every allegation set forth in the preceding Paragraphs as though fully set forth herein.

18. Jinhua Shubang's RAPID DRY Mark so resembles Petitioner's RAPIDRY Mark as to be likely, when applied to Jinhua Shubang's Goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Jinhua Shubang's Goods have their origin with Petitioner and/or that such goods are approved, endorsed, or sponsored by

Petitioner or associated in some way with Petitioner. Petitioner would thereby be injured by the continued Registration of the RAPID DRY Mark.

19. Jinhua Shubang's use or registration of the RAPID DRY Mark, in any form, is likely to cause confusion, to cause mistake, or to deceive consumers into the mistaken belief that the Jinhua Shubang's products are an extension of Petitioner's goods, so that registration of the RAPID DRY Mark is barred under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

20. Accordingly, it is Petitioner's belief that if Jinhua Shubang Registration remains, Petitioner will suffer irreparable harm and damage.

COUNT II

FRAUD ON THE PATENT AND TRADEMARK OFFICE BASED ON NON-USE

21. Petitioner repeats and realleges each and every allegation set forth in the preceding Paragraphs as though fully set forth herein.

22. The Jinhua Shubang Registration alleges a date of first use anywhere, and also a date of first use in United States commerce, of June 1, 2017. This date is alleged for each and every good listed in the Jinhua Shubang Registration.

23. Upon information and belief, Jinhua Shubang has not used the RAPID DRY Mark in United States commerce on at least some of the goods covered by the Jinhua Shubang Registration.

24. Upon information and belief, Jinhua Shubang has not used the RAPID DRY Mark in United States commerce on any of the goods covered by the Jinhua Shubang Registration.

25. Upon information and belief, the alleged use as shown on the Specimens of Use submitted with the application which matured into the Jinhua Shubang Registration is not trademark use, but instead is merely ornamental use.

26. Upon information and belief, Jinhua Shubang has not sold any goods in the U.S. under the RAPID DRY Mark.

27. Upon information and belief, Jinhua Shubang has committed fraud on the U.S. Patent and Trademark Office in prosecution of the Jinhua Shubang Registration.

28. Specifically, upon information and belief, Jinhua Shubang falsely claimed in the application which became the Jinhua Shubang Registration that it had used the RAPID DRY Mark in United States Commerce on each and every one of the goods listed in the Jinhua Shubang Registration.

29. Upon information and belief, Applicant had not at that time, and continuing until today still has not, used the Subject Mark on at least some of the goods in the Jinhua Shubang Registration.

30. Upon information and belief, at the time this false representation was made, Jinhua Shubang knew that it had not used the RAPID DRY Mark on each and every one of the goods listed in the Jinhua Shubang Registration.

31. Upon information and belief, at the time this false representation was made, Jinhua Shubang knew that it had not used the RAPID DRY Mark on any of the goods listed in the Jinhua Shubang Registration.

32. Upon information and belief, Applicant's false representation was made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to approve the application which became the Jinhua Shubang Registration for each of those goods, and reasonably relying upon the truth of said false statement, the U.S. Patent and Trademark Office did, in fact, approve the application which became the Jinhua Shubang Registration for each of those goods, and passed the application which became the Jinhua Shubang Registration to publication.

33. Based on the foregoing, Applicant has committed fraud on the U.S. Patent and Trademark Office.

COUNT III

ABANDONMENT

34. Petitioner repeats and realleges each and every allegation set forth in the preceding Paragraphs as though fully set forth herein.

35. Upon information and belief, the RAPID DRY Mark has been abandoned.

36. Specifically, as an alternative to Petitioner's information and belief that Jinhua Shubang has never used the RAPID DRY Mark in U.S. commerce, upon information and belief, Jinhua Shubang has discontinued use of the RAPID DRY Mark in connection with all the Jinhua Shubang Goods with the intent not to resume such use.

37. Upon information and belief, Jinhua Shubang has not used the RAPID DRY Mark in United States Commerce for more than three years prior to the date of this Petition to Cancel.

38. Without limiting the generality of the foregoing, Petitioner, upon information and belief, states:

- a. No active Jinhua Shubang websites have been identified;
- b. A search using Amazon.com's internal search engine found that no Jinhua Shubang products under the RAPID DRY Mark are currently offered.
- c. A search using available public search engines for social media, the internet at large, and archived news articles did not disclose any references to products under the RAPID DRY Mark by Jinhua Shubang as a currently available product.

39. For at least all of the reasons discussed above, Jinhua Shubang has abandoned the RAPID DRY Mark with respect to all the Jinhua Shubang Goods covered by the Jinhua Shubang Registration.

40. As Petitioner believes that Jinhua Shubang has abandoned the RAPID DRY Mark and the Jinhua Shubang Registration is invalid, and that Petitioner's Application has been refused registration under Section 2(d) of the Trademark Act based on a perceived likelihood of confusion with the Jinhua Shubang Registration, the continued existence of the Jinhua Shubang Registration has damaged and will continue to damage Petitioner.

41. It is Petitioner's belief that if the Jinhua Shubang Registration is not cancelled, Petitioner will suffer irreparable harm and damage.

WHEREFORE, Petitioner believes that it will be damaged by registration of the RAPID DRY Mark and requests that the Petition to Cancel be sustained, and that Registration No. 5,416,389 be cancelled with prejudice.

Respectfully submitted,

AMSTER ROTHSTEIN & EBENSTEIN LLP
Attorneys for Petitioner

/s/Chester Rothstein

Dated: October 19, 2022

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EXHIBIT A



United States Patent and Trademark Office

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RAPIDRY

Word Mark RAPIDRY

Goods and Services IC 025. US 022 039. G & S: Performance tops, shirts, performance bras, performance jackets, performance leggings, performance bike shorts, performance skorts. FIRST USE: 20040110. FIRST USE IN COMMERCE: 20040110

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 90865480

Filing Date August 4, 2021

Current Basis 1A

Original Filing Basis 1A

Owner (APPLICANT) Macy's IP Holdings, LLC LIMITED LIABILITY COMPANY OHIO 7 West Seventh Street Cincinnati OHIO 45202

Attorney of Record Max Vern

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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