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Filing date: **01/31/2023**

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	Frank August, LLLP		
Entity	LLLP	Citizenship	Kentucky
Address	114 SOUTH THIRD STREET BARDSTOWN, KY 40004 UNITED STATES		

Attorney information	ANDREW D. DORISIO DICKINSON WRIGHT PLLC 300 WEST VINE STREET, SUITE 1700 LEXINGTON, KY 40507 UNITED STATES Primary email: dwtrademarks@dickinson-wright.com Secondary email(s): adorasio@dickinson-wright.com, rden- nis@dickinson-wright.com 8598998740		
Docket no.	098676-00006		

Registration subject to cancellation

Registration no.	6291012	Registration date	03/09/2021
Register	Principal		
Registrant	BFrank, LLC 61498 GRAHAM RD AMITE, LA 70422 UNITED STATES		

Goods/services subject to cancellation

<p>Class 025. First Use: Dec 2, 2020 First Use In Commerce: Dec 2, 2020 All goods and services in the class are subject to cancellation, namely: Hats; Hoodies; Leggings; Pants; Shirts; Shirts and short-sleeved shirts; Socks; Sports bras; Tights; Athletic jackets; Athletic pants; Athletic shirts; Athletic tights; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Body shirts; Gym pants; Jogging pants; Lounge pants; Moisture-wicking sports bras; Moisture-wicking sports shirts; Short-sleeve shirts; Sport shirts; Sports jackets; Sports pants; Sports shirts; Sports shirts with short sleeves; Sports caps and hats; Stretch pants; Sweat jackets; Sweat shirts; T-shirts; Tee shirts; Wind pants; Wind shirts; Women's hats and hoods; Yoga pants; Yoga shirts</p>

Grounds for cancellation

No use of mark in commerce before application, amendment to allege use, or statement of use was due	Trademark Act Sections 14(1) and 1(a), (c), and (d)
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Failure to function as a mark	Trademark Act Sections 14(1) and 1,2 and 45
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Attachments	Petition to Cancel BFRANK Design.pdf(116230 bytes)
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Signature	/add/
Name	Andrew D. Dorisio
Date	01/31/2023

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

Frank August, LLLP		Cancellation No. _____
	Petitioner	
v.		Registration No. 6,291,012 for BFRANK & Design
BFRANK, LLC		
	Registrant	International Class: 25 Registration Date: March 9, 2021

PETITION TO CANCEL

Pursuant to 15 U.S.C. § 1064 and 37 C.F.R. §§ 2.111(b), Petitioner, Frank August, LLLP, a Kentucky limited liability limited partnership, with an address of 114 South Third Street, Bardstown, KY 40004, believes it has been and will continue to be damaged by the registration of the mark “BFRANK & Design” (“Registrant’s Mark”) in International Class 25 shown in Registration No. 6,291,012 (the “’012 Registration”) and hereby petitions the Board to cancel the same.

As grounds for cancellation, it is alleged that:

1. Petitioner is the owner of United States Trademark Registration Application Serial No. 974835147 for BE FRANK in International Class 025 for “Hats; Shirts” (“Petitioner’s Goods”).
2. Registrant, BFRANK, LLC, is a Louisiana limited liability company, with a stated address of 61498 Graham Road, Amite, Louisiana 70422.
3. On May 19, 2020, Registrant filed United States Trademark Registration Application Serial No. 88922872 for BFRANK & Design in International Class 025, claiming a

bona fide intention to use this mark in connection with: “Hats; Hoodies; Leggings; Pants; Shirts; Shirts and short-sleeved shirts; Socks; Sports bras; Tights; Athletic jackets; Athletic pants; Athletic shirts; Athletic tights; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Body shirts; Gym pants; Jogging pants; Lounge pants; Moisture-wicking sports bras; Moisture-wicking sports shirts; Short-sleeve shirts; Sport shirts; Sports jackets; Sports pants; Sports shirts; Sports shirts with short sleeves; Sports caps and hats; Stretch pants; Sweat jackets; Sweat shirts; T-shirts; Tee shirts; Wind pants; Wind shirts; Women's hats and hoods; Yoga pants; Yoga shirts.”

4. On January 5, 2021, Applicant filed a Statement of Use claiming actual use of the mark in commerce on all of the following goods: “Hats; Hoodies; Leggings; Pants; Shirts; Shirts and short-sleeved shirts; Socks; Sports bras; Tights; Athletic jackets; Athletic pants; Athletic shirts; Athletic tights; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Body shirts; Gym pants; Jogging pants; Lounge pants; Moisture-wicking sports bras; Moisture-wicking sports shirts; Short-sleeve shirts; Sport shirts; Sports jackets; Sports pants; Sports shirts; Sports shirts with short sleeves; Sports caps and hats; Stretch pants; Sweat jackets; Sweat shirts; T-shirts; Tee shirts; Wind pants; Wind shirts; Women's hats and hoods; Yoga pants; Yoga shirts” (“Registrant’s Goods”).

5. As a result of Registrant’s claim of actual use on all Registrant’s Goods, as required before any registration can issue pursuant to Section 1(a) of the Trademark Act, the ‘012 Registration for the BFRANK & Design mark issued on March 9, 2021.

6. Petitioner’s BE FRANK mark of United States Trademark Registration Application Serial No. 97483514 has been refused registration based on the BFRANK & Design mark of the ‘012 Registration.

7. On information and belief, Registrant did not use Registrant's Mark in commerce in connection with any or all Registrant's Goods prior to May 17, 2021, the end of the first six month period for showing use set in the Notice of Allowance mailed November 17, 2020, so the verified statement made that the mark was in use on all Registrant's Goods made in the Statement of Use filed January 15, 2021 was false, and such false statement was relied upon by the U.S. Patent and Trademark Office in issuing the '012 Registration and therefore material to the decision to issue said registration.

8. In the alternative, any use of Registrant's Mark on Registrant's Goods prior to May 17, 2001, was ornamental in nature, and thus failed to function as a registrable mark, pursuant to Sections 1 and 45 of the U.S. Trademark Act, 15 USC Sections 1051 and 1127.

9. WHEREFORE, Petitioner believes that it will be damaged by the continued registration of Registrant's Mark and, for the foregoing reasons, requests that the '012 Registration be cancelled.

Please recognize as attorneys for Petitioner in this process Andrew D. Dorisio and the firm Dickinson Wright PLLC at 300 West Vine Street, Suite 1700, Lexington, Kentucky 40507.

Dated: January 31, 2023

Respectfully Submitted,

/s/ Andrew D. Dorisio
Andrew D. Dorisio
DICKINSON WRIGHT PLLC
300 West Vine Street, Suite 1700
Lexington, Kentucky 40507
Telephone: (859) 899-8740
Facsimile: (844) 670-6009
adorisio@dickinsonwright.com