

ESTTA Tracking number: **ESTTA1270467**

Filing date: **03/07/2023**

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	ALFWEAR INC.		
Entity	Corporation	Citizenship	Utah
Address	1635 SOUTH 5070 WEST SUITE C SALT LAKE CITY, UT 84014 UNITED STATES		
Attorney information	TRENT H. BAKER BAKER IP PLLC 124 SOUTH MAIN STREET, #3147 CEDAR CITY, UT 84720 UNITED STATES Primary email: trent@bakerip.com Secondary email(s): admin@bakerip.com, bowen@rqn.com, arichards@rqn.com, kpickering@rqn.com, docket@rqn.com (801) 618-3359		
Docket no.	44140-83		

Registration subject to cancellation

Registration no.	6836608	Registration date	09/06/2022
Register	Principal		
Registrant	Boss Headwear LLC 11329 WEST RIVER RD. CALDWELL, ID 83607 UNITED STATES		

Goods/services subject to cancellation

Class 025. First Use: Jul 17, 2018 First Use In Commerce: Jul 17, 2018
All goods and services in the class are subject to cancellation, namely: Hats

Grounds for cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Marks cited by petitioner as basis for cancellation

U.S. registration no.	3149845	Application date	01/05/2005
Register	Principal		

Registration date	09/26/2006	Foreign priority date	NONE
Word mark	NONE		
Design mark			
Description of mark	NONE		
Goods/services	Class 025. First use: First Use: Jan 5, 2005 First Use In Commerce: Jan 5, 2005 Clothing, namely, jackets, shirts, pants, shorts, T-shirts, and hats		

U.S. registration no.	3257143	Application date	01/09/2006
Register	Principal		
Registration date	06/26/2007	Foreign priority date	NONE
Word mark	NONE		
Design mark			
Description of mark	NONE		
Goods/services	Class 025. First use: First Use: Jan 5, 2005 First Use In Commerce: Jan 5, 2005 Clothing, namely, jackets, shirts, pants, shorts, t-shirts, and hats		

U.S. registration no.	6982979	Application date	06/02/2021
Register	Principal		
Registration date	02/21/2023	Foreign priority date	NONE
Word mark	NONE		
Design mark			
Description of mark	The mark consists of brown mountains with white snow below a blue sky surrounded by a black outside border, then a white border, then a black inside border. There is snow on the left side of the mountain that appears bright white on the left side of the mountain with black shadows on the right side of the mountain.		
Goods/services	Class 025. First use: First Use: Sep 10, 2003 First Use In Commerce: Sep 10, 2003 Hats; Pants; Shirts; Shorts; Socks; Belts; Hoodies; Jackets; Tops as clothing; T-shirts		

Attachments	Petition to Cancel.pdf(204074 bytes)
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Signature	/s Trent H. Baker /
Name	Trent H. Baker
Date	03/07/2023

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Attorneys for Petitioner Alfwear, Inc.

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

ALFWEAR, INC., Petitioner, v. BOSS HEADWEAR LLC, Respondent.

Cancellation No. _____



Mark:

Registration No. 6,836,608
Registered: September 6, 2022
Serial No. 90-632,449
Filed: April 8, 2021


PETITION TO CANCEL

Petitioner Alfwear, Inc. (“Alfwear” or “Petitioner”), by and through its undersigned counsel, files this Petition to Cancel and alleges as follows.

1. Alfwear is a Utah corporation with its principal place of business at 1635 South 5070 West, Suite C, Salt Lake City, Utah 84104.

2. On information and belief, Respondent Boss Headwear LLC (“Boss” or “Respondent”) is an Idaho limited liability company with an address at 11329 West River Road, Caldwell, Idaho 83607.

3. Alfwear designs and sells, among other products, clothing and outdoor products.

4. Alfwear has made commercial use of the marks  , and

(collectively the “Mountain Logos”) in the United States on its products and in connection with the sale and marketing of its products, including clothing and hats.

5. As a result of Alfwear’s use of the Mountain Logos, Alfwear has developed longstanding common-law rights in the Mountain Logos.

6. The Mountain Logos, when used in connection with clothing and hats, are inherently distinctive.

7. Alfwear uses the Mountain Logos on its website (www.kuhl.com), on product packaging, on products, in marketing and advertising, on social media, on in-store displays, and in direct email marketing.

8. Alfwear is the owner of and relies on U.S. Trademark Registration No. 3,149,845



for the mark (design) for “Clothing, namely, jackets, shirts, pants, shorts, T-shirts, and hats” in International Class 025. The registration issued on September 26, 2006. This registration is incontestable under 15 U.S.C. § 1065.



9. Alfwear began using the mark in commerce in connection with clothing and hats by at least January 5, 2005.

10. Alfwear is the owner of and relies on U.S. Trademark Registration No. 3,257,143



for the mark (design) for use in connection with “Clothing, namely, jackets, shirts, pants, shorts, t-shirts, and hats” in International Class 025. The registration issued on June 26, 2007. This registration is incontestable under 15 U.S.C. § 1065.



11. Alfwear began using the mark in commerce in connection with clothing and hats by at least January 5, 2005.

12. Alfwear is the owner of and relies on U.S. Trademark Registration No. 6,982,979



for the mark (design) for, in part, “Hats; Pants; Shirts; Shorts; Socks; Belts; Hoodies;

Jackets; Tops as clothing; T-shirts” in International Class 025. The registration issued on February 21, 2023.



13. Alfwear began using the mark in commerce in connection with clothing and hats by at least September 10, 2009.

14. Alfwear will refer to the registrations identified in paragraphs 8, 10, and 12 above as the “Mountain Logo Registrations.”

15. In this Petition to Cancel, Alfwear asserts its rights in each of the Mountain Logo Registrations and in its common-law rights in each of the Mountain Logos.

16. On September 6, 2022, Registration No. 6,836,608 (the “Respondent



Registration”) issued for the mark (the “Respondent Logo”). The application that issued as the Respondent Registration (the “Respondent Application”) was filed on April 8, 2021. The Respondent Registration asserts a date of first use in commerce of July 17, 2018.

17. The Respondent Registration identifies “Hats” in International Class 025.

18. Boss is the listed current owner of the Respondent Registration.

19. Alfwear petitions to cancel the Respondent Registration in its entirety as to all goods listed in the registration.

20. Boss has no license, consent, or permission from Alfwear to use or register the Boss hats registration.

21. The applications that issued as Registration Nos. 3,149,845 and 3,257,143 were filed before the filing of the Respondent Application and before the date of first use alleged in

the Respondent Registration. Moreover, Alfwear's date of first use in commerce of each of the Mountain Logos predates the filing of the Respondent Application and the date of first use alleged in the Respondent Registration.


22. The Respondent Logo is similar in appearance, connotation, and commercial

impression to each of the Mountain Logos. The Respondent Logo and the marks  and



all depict a mountain peak with blue in the background surrounded by a black border.



The mark  also depicts a mountain peak and could be depicted to have a blue background identical to the blue background of the Respondent Logo.

23. The goods identified in the Respondent Registration are identical or closely related to the goods identified in each of the Mountain Logo Registrations and the goods in connection with which Alfwear has used each of the Mountain Logos.

24. The goods identified in the Respondent Registration travel in the same or similar channels of trade as the goods identified in each of the Mountain Logo Registrations and the goods in connection with which Alfwear has used each of the Mountain Logos.

25. The goods identified in the Respondent Registration are sold to the same or similar types of customers as the goods identified in each of the Mountain Logo Registrations and the goods in connection with which Alfwear's has used each of the Mountain Logos.

26. By virtue of its efforts and the expenditure of considerable sums for promotional materials and advertisements and the quality of its goods and services, Alfwear has gained a valuable reputation and exceedingly valuable goodwill in connection with each of the Mountain Logos.

27. On information and belief, Alfwear's Mountain Logos have acquired commercial strength and fame as a unique identifier of Alfwear's goods and services and distinguish Alfwear's goods and services from the goods and services of others.

28. The Respondent Registration should be cancelled in its entirety because the Respondent Logo, when used on or in connection with the identified goods, so resembles Alfwear's previously used and registered Mountain Logos marks as to be likely to cause confusion, or to cause mistake, or to deceive.

29. Alfwear has been and will continue to be damaged by Boss' registration of the confusingly similar Respondent Logo.

WHEREFORE, Petitioner requests that Registration No. 6,836,608 be cancelled in Petitioner's favor.

Alfwear appoints Trent Baker as the lead attorney in this matter, to prosecute this Petition to Cancel, to transact all business in the United States Patent & Trademark Office and in the United States courts in connection with this Petition to Cancel, to sign his name to all papers which may hereinafter be filed in connection therewith, and to receive all communications relating to the same. Alfwear appoints Brandon Owen and Adam Richards as co-counsel.

DATED this 7th day of March, 2023.

BAKER IP LLC

/s Trent Baker/

Trent Baker

RAY QUINNEY & NEBEKER P.C.

/s S. Brandon Owen/

S. Brandon Owen

Adam K. Richards

Attorneys for Petitioner Alfwear, Inc.

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