

09/05/2003TTAB

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

In Re Registration No. )  
2,327,634, issued March 14, 2000 )  
VSL Pharmaceuticals, Inc. )  
Petitioner )  
v. )  
Istituto Italiano Fermenti S.p.A. )  
Respondent )

Atty. Ref.: 2818-160

Cancellation No. \_\_\_\_\_



08-12-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

**PETITION FOR CANCELLATION**

Petitioner, VSL Pharmaceuticals, Inc., a corporation of Delaware, having its principal offices at 800 South Frederick Avenue, Gaithersburg, Maryland 20877, believes that it is being damaged by Registration No. 2,327,634, issued March 14, 2000, and hereby petitions to cancel the same.

As grounds for the present petition, it is alleged that:

1. Istituto Italiano Fermenti S.p.A. (hereinafter "Respondent") is the record owner of United States Trademark Registration No. 2,327,634, issued March 14, 2000, of the trademark YOVIS for pharmaceutical preparations for the treatment of acne, cholesterol, cholecystitis, cancer, hyperglycemia, diabetes, high blood pressure and rheumatism; veterinary preparations for the treatment of ring worm, rabies, scabies, anti-mange, horse-fly, ticks, flea repellents; herbicides for domestic and agricultural use; pesticides for domestic and agricultural use; sanitary preparations, namely, all purpose disinfectants, disinfecting handwash, sanitary napkins, sanitary pads, pre-moistened medicated towelettes; incontinence garments, namely, sanitary panties, sanitary

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knickers; dietetic beverages adapted for medical purposes; dietetic foods adapted for medical purposes; food for babies; dietetic foods for medical purposes, namely, milk ferments, malt, malted milk, albuminous milk, milk sugar or lactose; teat dip; dietary supplement for medical purposes, vitamins for medical purposes (hereafter "the YOVIS goods").

2. Petitioner is the owner of the trademark YOVIS, having adopted the mark for use in connection with pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; nutraceuticals; food supplements.

3. Petitioner filed Application Serial No. 76/526,202 in the United States Patent and Trademark Office on June 27, 2003, seeking to register the mark YOVIS for pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; nutraceuticals; food supplements.

4. On information and belief, Respondent discontinued use of the registered mark YOVIS for a period of more than three years with no intent to resume said use and, therefore, has abandoned YOVIS as a trademark for the YOVIS goods within the meaning of § 45 of the Trademark Act.

5. On information and belief, Respondent has never used the registered mark YOVIS since the issuance of Registration No. 2,327,634 more than three years ago and, therefore, has abandoned YOVIS as a trademark for the YOVIS goods within the meaning of § 45 of the Trademark Act.

6. Registration No. 2,327,634 of the mark YOVIS accordingly is invalid as a matter of law and is subject to cancellation at any time under § 14 of the Trademark Act of 1946.

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7. As Respondent has abandoned YOVIS as a trademark for the aforesaid goods, Petitioner has now established superior rights in the mark YOVIS for pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; nutraceuticals and food supplements.

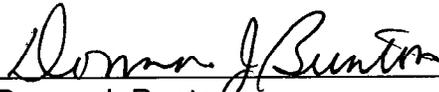
8. For the reasons set forth above, Petitioner is likely to be damaged by the continued existence of Registration No. 2,327,634, and the business and goodwill of Petitioner is further damaged in that said registration tends to create or maintain statutory rights in violation and derogation of Petitioner's rights.

The requisite filing fee for this Petition for Cancellation is submitted herewith.

WHEREFORE, Petitioner prays that judgment be entered herein canceling United States Trademark Registration No. 2,327,634 and for such other and further relief as may be just and proper.

VSL PHARMACEUTICALS, INC.

Dated: August 12, 2003

By:   
Donna J. Buntor  
Attorney for Petitioner  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TTAB

VS PHARMACEUTICALS, INC.,

Petitioner,

v.

ISTITUTO ITALIANO FERMENTI S.P.A.,

Respondent.



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Cancellation No. \_\_\_\_\_

Our Account No. 14-1140

Our Order 2818-160

No.

C# M#

In Re Registration No. 2,327,634  
Issued March 14, 2000  
For the Mark YOVIS

Date: August 12, 2003

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**Box TTAB Fee**

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

Sir:  
The document indicated below is attached for filing and is incorporated by reference. Fees are attached as calculated below:

- NOTICE OF OPPOSITION in 0 class(es) (\$ 300.00 per class) \$ 0.00
- PETITION FOR CANCELLATION in 1 class(es) (\$ 300.00 per class) \$ 300.00

**TOTAL FEE ENCLOSED \$ 300.00**

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this form) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

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**NIXON & VANDERHYE P.C.**

By Atty: Donna J. Bunton

Signature: Donna J. Bunton