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Label No. EQ 163516836 US

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

In the Matter of Registration No. 2,693,944/76202038

Date of Issue: March 4, 2003

_____)
EARTHLITE MASSAGE TABLES, INC.,)
a California corporation,)
)
	Petitioner,)
)
	v.)
)
LIFEGEAR, INC., a New Jersey corporation,)
dba EARTHGEAR,)
	Defendant.)
_____)

Cancellation No.:

To: United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

TRANSMITTAL OF PETITION FOR CANCELLATION

Enclosed are:

(1) An original and one duplicate copy of a Petition for Cancellation on behalf of Petitioner, EARTHLITE MASSAGE TABLES, INC. (hereinafter "Petitioner") with respect to the mark, Registration No. 2,693,944, issued March 4, 2003, of LIFEGEAR, INC., for goods in International Class 10 set forth as:



"MASSAGE APPARATUS, NAMELY, MASSAGE TABLES, MASSAGE CHAIRS, AND MASSAGE PADS THAT ARE COMPONENT PARTS OF MASSAGE TABLES AND CHAIRS; NON-ELECTRIC MASSAGE PADS FOR THERAPEUTIC MEDICAL USE; THERAPEUTIC SAUNAS, NAMELY STEAM SAUNA BOOTHS" and for goods in International Class 11 set forth as "SAUNAS, NAMELY, STEAM SAUNA BOOTHS"; and

(2) A check for \$600.00 for the filing fee for the instant Petition for Cancellation for two classes of goods.

If for any reason the Patent and Trademark Office filing fee should exceed \$600.00, please charge any additional sums to Deposit Account No. 501141.

Dated: November 3, 2005

Respectfully submitted,
Earlrite Massage Tables, Inc.

By:

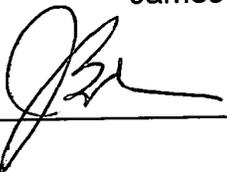

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Signature:



THERAPEUTIC MEDICAL USE; THERAPEUTIC SAUNAS, NAMELY STEAM SAUNA BOOTHS" and in International Class 11 for goods designated as "SAUNAS, NAMELY STEAM SAUNA BOOTHS", both claiming first use on September 6, 2002.

As grounds for this Petition, it is alleged that:

1. Petitioner is the owner of U.S. Trademark Registration No. 2,238,613 for the mark "EARTHLITE" and a stylized globe design, for massage tables in International Class 10, which was registered on April 13, 1999. This registration was based on an application filed in the U.S. Patent and Trademark Office on January 15, 1998, which claims a date of first use in commerce of not later than October 31, 1987. The registration date, the filing date and the date of first use of Petitioner's mark are prior to the date of filing of defendant's application, and prior to the date of defendant's claimed first use. Petitioner's registered mark is valid and subsisting and is conclusive evidence of petitioner's exclusive right to use said mark in commerce on the goods specified in said registration.

2. Petitioner, since at least October 31, 1987, has been, and is now, using the mark EARTHLITE in connection with the sale of massage tables and other massage and therapeutic related products. Said use has been valid and continuous since said date of first use and has not been abandoned. Said mark EARTHLITE of Petitioner is symbolic of extensive good will and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the related nature of the goods of the respective parties, it is alleged that defendant's registered mark so resembles Petitioner's mark EARTHLITE previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.

3. Petitioner is the owner of U.S. Trademark Registration No. 2,508,704 for the mark "EARTHLITE WORLD'S #1 BRAND IN MASSAGE" and a stylized globe design, for massage tables in International Class 10, which was registered on November 20, 2001. This registration was based on an application

filed in the U.S. Patent and Trademark Office on November 2, 1999, which claims a date of first use in commerce of not later than October 26, 1999. The registration date, the filing date and the date of first use of Petitioner's mark are prior to the date of filing of defendant's application, and prior to the date of defendant's claimed first use. Petitioner's registered mark is valid and subsisting and is at least prima facie evidence of petitioner's exclusive right to use said mark in commerce on the goods specified in said registration.

4. Petitioner, since at least October 26, 1999, has been, and is now, using the mark EARTHLITE WORLD'S #1 BRAND IN MASSAGE in connection with the sale of massage tables and other massage and therapeutic related products. Said use has been valid and continuous since said date of first use and has not been abandoned. Said mark EARTHLITE WORLD'S #1 BRAND IN MASSAGE of Petitioner is symbolic of extensive good will and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the related nature of the goods of the respective parties, it is alleged that defendant's registered mark so resembles Petitioner's mark EARTHLITE WORLD'S #1 BRAND IN MASSAGE previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.

5. Petitioner, since at least October 1987, has been, and is now, operating under a designation that includes "EARTHLITE", such as Earthlite Massage Tables, Inc., in the area of massage tables, massage chairs and numerous other massage-related products. Said use has been valid and continuous since said date of first use and the relevant class of the public has come to associate Petitioner with said designation. In view of the similarity of defendant's registered mark with Petitioner's designation, and in view of the related nature of the uses therefor, it is alleged that defendant's registered mark consists of and comprises matter which may disparage and falsely suggest a connection with Petitioner.

WHEREFORE, Petitioner prays that Registration No. 2,693,944 be canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

Petitioner hereby appoints The Law Office of Steven G. Roeder, a law firm composed of attorneys Steven G. Roeder and James P. Broder, whom are each a member of the bar of the State of California and registered before the U.S. Patent and Trademark Office, to act as attorneys for Petitioner herein, with full power to prosecute said Petition, to transact all relevant business with the Patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this Petition for Cancellation.

Dated: November 3, 2005

Respectfully submitted,
Earthlite Massage Tables, Inc.

By: _____


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