

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

**IN THE MATTER OF REGISTRATION NO. 2,693,944
DATE OF ISSUE: MARCH 4, 2003**

EARTHLITE MASSAGE TABLES, INC.,)	OPPOSITION NO. 92045166
)	
PETITIONER,)	
vs.)	
LIFEGEAR, INC.,)	ANSWER TO PETITIONER'S
)	PETITION FOR CANCELLATION
)	
DEFENDANT.)	
)	
)	
)	

Defendant, LIFEGEAR, INC. ("Registrant"), hereby responds to Petitioner EARTHLITE MASSAGE TABLES, INC.'s ("Petitioner") Petition for Cancellation as follows:

As to the introductory paragraph of the Notice, Registrant acknowledges that U.S. Registration No. 2,693,944 issued on March 16, 2004 ("the '944 Registration") to Registrant; that it is a New Jersey corporation having offices at 9858 Baldwin Place, El Monte, California 91731; that the '944 Registration is for the mark EARTHGEAR in International Class 11 for goods designated as "saunas, namely, steam sauna booths," and in International Class 10 for goods designated 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,” claiming first use at least as early as September 6, 2002 for both classes. Registrant is without information sufficient to truthfully admit or deny the remaining allegations in this paragraph, and on this basis, denies the allegations regarding the same.

1. In response to the first paragraph of the Petition for Cancellation, Registrant is without information sufficient to truthfully admit or deny whether Petitioner is the owner of U.S. Registration No. 2,238,613; whether this registered mark is valid and subsisting; or whether this registered mark is conclusive evidence of Petitioner’s exclusive right to use said mark in commerce on the goods specified in said registration, and on this basis, denies these allegations. Registrant admits the remaining allegations in this paragraph.

2. In response to the second paragraph of the Petition for Cancellation, Registrant acknowledges that Petitioner is now using the mark EARTHLITE in connection with the sale of massage tables and other massage and therapeutic related products. Registrant is without information sufficient to truthfully admit or deny the remaining allegations in this paragraph, and on this basis, denies the allegations regarding the same.

3. In response to the third paragraph of the Petition for Cancellation, Registrant is without information sufficient to truthfully admit or deny whether Petitioner is the owner of U.S. Registration No. 2,508,704; whether this registered mark is valid and subsisting; and whether this registered mark is at least prima facie evidence of Petitioner’s exclusive right to

use said mark in commerce on the goods specified in said registration, and on this basis, denies these allegations. Registrant admits the remaining allegations in this paragraph.

4. In response to the fourth paragraph of the Petition for Cancellation, Registrant acknowledges that Petitioner 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. Registrant is without information sufficient to truthfully admit or deny the remaining allegations in this paragraph, and on this basis, denies the allegations regarding the same.

5. In response to the fifth paragraph of the Petition for Cancellation, Registrant acknowledges that Petitioner is now operating as Earthlite Massage Tables, Inc., in the area of massage tables, massage chairs, and numerous other massage-related products. Registrant is without information sufficient to truthfully admit or deny the remaining allegations in this paragraph, and on this basis, denies the allegations regarding the same.

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AFFIRMATIVE DEFENSES

Registrant, LIFEGEAR, INC., asserts the following affirmative defenses, reserving the right to modify and expand these affirmative defenses up to and throughout the time of adjudication.

7. Paragraphs 1-6 of Registrant's Answer are hereby incorporated in their entirety to these affirmative defenses by reference.

8. Petitioner has failed to state a claim upon which relief can be granted.

9. The Petition should be dismissed because Petitioner has unclean hands.

10. The instant Petition should be dismissed due to delay, laches, estoppel, waiver, and/or acquiescence.

11. Registrant alleges that the instant Petition should be dismissed because Petitioner's marks are not inherently distinctive and have not acquired secondary meaning.

12. Registrant alleges that there is no likelihood of confusion, mistake or deception between Registrant's registered mark and Petitioner's pleaded marks, because, *inter alia*, Registrant's mark and Petitioner's marks are not confusingly similar.

13. In view of the foregoing, Registrant contends that this Petition is groundless and baseless in fact and that Petitioner has not shown in any manner whatsoever wherein it will be, or is likely to be, damaged by the '944 Registration, i.e., Petitioner has failed to allege grounds sufficient to establish standing and to maintain this Petition for Cancellation.

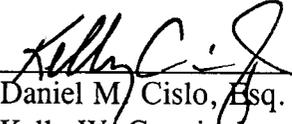
WHEREFORE, Registrant prays that:

The Petition for Cancellation against U.S. Registration No. 2,693,944 be dismissed in its entirety.

It is not believed that any additional fees are due; however, in the event any additional fees are due, the Trademark Office is authorized to charge Registrant's attorney's deposit account no. 03-2030.

Respectfully submitted,

Date: January 23, 2006



Daniel M. Cislo, Esq.
Kelly W. Cunningham, Esq.

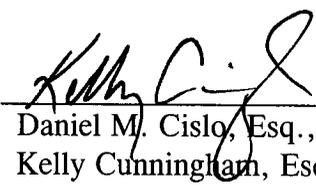
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Santa Monica, California 90401
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Attorney for Registrant LIFE GEAR, INC.

CERTIFICATE OF SERVICE

I hereby certify that one (1) copy of this document is being deposited with the United States Postal Service as First Class Mail, postage affixed, in an envelope addressed to:

James P. Broder, Esq.
THE LAW OFFICE OF STEVEN G. ROEDER
5560 Chelsea Avenue
La Jolla, California 92037

Dated: January 23, 2006

By: 

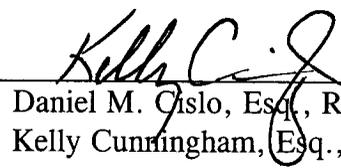
Daniel M. Cislo, Esq., Reg. No. 32,973
Kelly Cunningham, Esq., Reg. No. 43,570

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2900 Crystal Drive
Arlington, Virginia 22202-3513
ATTN: TTAB NO FEE

Dated: January 23, 2006

By: 

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Kelly Cunningham, Esq., Reg. No. 43,570

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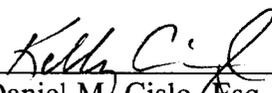
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Respectfully submitted,

CISLO & THOMAS LLP

Date: January 23, 2006



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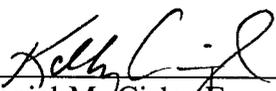
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Respectfully submitted,

CISLO & THOMAS LLP

Date: January 23, 2006


Daniel M. Cislo, Esq., Reg. No. 32,973
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