

ESTTA Tracking number: **ESTTA214643**

Filing date: **05/30/2008**

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

Proceeding	92047608
Party	Defendant Bodies In Motion, Inc.
Correspondence Address	BODIES IN MOTION, INC. 14118 Magnolia Blvd. Sherman Oaks, CA 914231119 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Ralph H. Dougherty
Filer's e-mail	ralph@ralphdougherty.com
Signature	/Ralph H. Dougherty/
Date	05/30/2008
Attachments	Petition.pdf (3 pages)(97781 bytes) ANSWER.pdf (3 pages)(107944 bytes) Cert of Service.pdf (1 page)(43460 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re U.S. Registration Nos. 2,991,288 and 3,195,432;
Issued September 6, 2005 and January 9, 2007
Registrant – BODIES IN MOTION, INC.:
Marks: ZEN SPA & WELLNESS CENTER

Zen Spa Enterprises, Inc.,)
Dba Zen Spa and Health Studio)
Petitioner,)
)
v.)
)
BODIES IN MOTION, INC.,)
)
Registrant.)
)

Cancellation No. 92047608

PETITION TO REVIVE

BOX TTAB
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

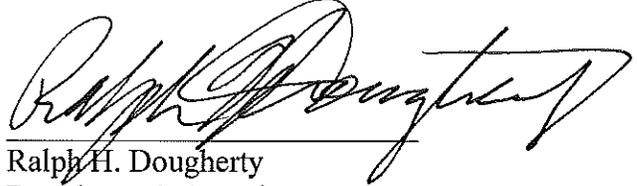
Kevin L. Koon and Lea P. Koon, the owners of the registrations identified in the heading of this document (hereinafter “Owners”), having become Owners of Record by purchase of both of the marks ZEN SPA & WELLNESS CENTER U. S. Trademark Registration No. 2,991,288, registered January 9, 2007, and ZEN SPA & WELLNESS CENTER (AND DESIGN), U. S. Trademark Registration No. 2,991,288, registered September 6, 2005, plead and aver as follows:

1. The two registered marks were obtained by Registrant, Bodies In Motion, Inc., of Sherman Oaks, California.
2. Owners began negotiations with Registrant to purchase these marks prior to August, 2007, after having determined that an opposition or cancellation filed against one or both of the marks on behalf of Zen Spa Enterprises, Inc., had been dismissed.
3. Owners inquired of Bodies in Motion, Inc., through their Attorney whether Registrant had ever been served in the action by Zen Spa Enterprises, and was informed that Registrant had not been served.
4. Owners concluded negotiations for purchase of the marks in December, 2007, and an Assignment of the marks to Owners was executed on January 18, 2008. However, the Assignment was not forwarded to Owners by Registrant's Attorney until February 5, 2008. It was received by Owners' Attorney on Friday, February 8, 2008, and was submitted for recordation on the following workday, Monday, February 11, 2008.
5. On February 27, 2008, the Trademark Trial and Appeal Board issued a decision granting the cancellation of the marks of Owners.
6. Neither Registrant nor Owners have ever been served in this cancellation procedure. At the time of Service by Publication, January 1, 2008, Registrant had relinquished its rights to the marks by agreement, and Owners had not been recipients of the Assignment of the marks.
7. Owners pray that they be given an opportunity to Answer the Cancellation Proceeding.

WHEREFORE, Owners pray that the Board's Decision of February 27, 2008, be vacated, and the Cancellation proceeding be reinstated.

This the 30th day of May, 2008.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ralph H. Dougherty", written over a horizontal line.

Ralph H. Dougherty
Dougherty & Associates
6100 Fairview Rd., Ste. 550
Charlotte, North Carolina 28210
Telephone: (704) 940-3988
Facsimile: (704) 940-3989
E-mail: ralph@ralphdougherty.com
Attorney for Owners

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re U.S. Registration Nos. 2,991,288 and 3,195,432;
Issued September 6, 2005 and January 9, 2007
Registrant – BODIES IN MOTION, INC.:
Marks: ZEN SPA & WELLNESS CENTER

Zen Spa Enterprises, Inc.,)
 Dba Zen Spa and Health Studio)
 Petitioner,)
v.)
BODIES IN MOTION, INC.,)
 Registrant.)

Cancellation No. 92047608

**ANSWER, and AFFIRMATIVE
DEFENSES**

BOX TTAB
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Kevin L. Koon and Lea P. Koon, the owners of the registrations identified in the heading of this document (hereinafter “Owners”), answering the Petition for Cancellation filed by Zen Spa Enterprises, Inc., against U. S. Trademark Registration No. 2,991,288 and 3,195,432; for the marks ZEN SPA & WELLNESS CENTER and ZEN SPA & WELLNESS CENTER (AND DESIGN), registered January 9, 2007, and September 6, 2005, respectively, plead and aver as follows:

ANSWER

Owners are unable to locate or download the Notice of Opposition from the TTAB website, and thus answer the averments of the petition to cancel filed on April 30, 2007.

1. Owners state that they have insufficient evidence to know if the averments contained in paragraph 1 are true and correct and therefore deny the averments contained in paragraph 1.
2. Owners state that they have insufficient evidence to know if the averments contained in paragraph 2 are true and correct and therefore deny the averments contained in paragraph 2.
3. Owners state that they have insufficient evidence to know if the averments contained in paragraph 3 are true and correct and therefore deny the averments contained in paragraph 3.
4. Owners deny the averments in paragraph 4.
5. Owners deny the averments in paragraph 5.
6. Owners deny the averments in paragraph 6.

AFFIRMATIVE DEFENSES

7. Owners incorporate herein paragraphs 1 through 6 as if they were fully written and set forth herein.
8. Petitioner has failed to allege grounds sufficient to establish its standing to maintain the present opposition.
9. Petitioner apparently operates a single location in San Juan, Puerto Rico, and thus is not entitled to registration of its mark.

10. Petitioner has filed an application for the registration of the mark ZEN SPA and DESIGN with the United States Patent and Trademark Office. Petitioner filed this application, Serial no. 78/421,490, on an actual use basis.

11. Owners believe that there is no likelihood of confusion between Petitioner's mark and Owners' two registered marks, as the examining trademark attorney has stated on at least one occasion during prosecution of Petitioner's application.

12. Petitioner's mark will cause no confusion with Registrant's registered marks and therefore Petitioner's mark should not be denied registration.

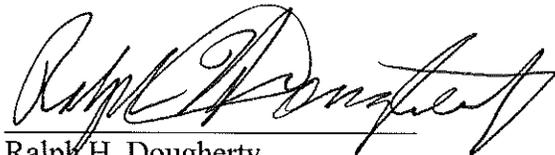
RELIEF REQUESTED

1. On behalf of Registrant, Owners ask that this cancellation proceeding be dismissed.

WHEREFORE, Owners pray that the Petition for Cancellation be dismissed in its entirety.

This the 30th day of May, 2008.

Respectfully submitted,



Ralph H. Dougherty
Dougherty & Associates
6100 Fairview Rd., Ste. 550
Charlotte, North Carolina 28210
Telephone: (704) 940-3988
Facsimile: (704) 940-3989
E-mail: ralph@ralphdougherty.com
Attorney for Owners

