

ESTTA Tracking number: **ESTTA161659**

Filing date: **09/10/2007**

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 requests to cancel indicated registration.

Petitioner Information

Name	Fleming and Company, Pharmaceuticals		
Entity	Corporation	Citizenship	Missouri
Address	1733 Gilsinn Lane Fenton, MO 63026 UNITED STATES		

Attorney information	William D. O'Neill Senniger Powers One Metropolitan Square 16th Floor St. Louis, MO 63102 UNITED STATES ustrademarks@senniger.com, woneill@senniger.com Phone:314-231-5400		
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Registration Subject to Cancellation

Registration No	3074033	Registration date	03/28/2006
Registrant	H2OCEAN INC. 1301 West Newport Center Drive Deerfield Beach, FL 33442 UNITED STATES		

Goods/Services Subject to Cancellation

<p>Class 003. First Use: 2004/04/05 First Use In Commerce: 2005/05/08 All goods and services in the class are cancelled, namely: Cosmetics and skin care products, namely, skin care preparations, skin and facial cleansers, body sprays, face and body beauty creams, body gels, and body and facial scrubs, facial masks, pre-moistened cosmetic cleansing wipes, bath salts, face and body moisturizing sprays, non-medicated body soaks, nail care preparations, hand and foot deodorant sprays, skin creams, beauty gels, body scrubs, sun tan lotion, sun tan gels, sun tan sprays, sun-block lotions, sun-block gels, sun-block sprays, personal deodorants, shaving preparations, after-shave lotions, after-shave gels, after-shave sprays, shaving creams, shaving foams, shaving gels, shaving lotions, shaving sprays, hair care preparations, hair styling gels, hair styling mousses, shampoos, soaps, non-medicated mouth rinses, toothpaste, teeth whitening sprays, teeth whitening gels</p>
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Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration	1652123	Application Date	04/20/1990
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No.			
Registration Date	07/30/1991	Foreign Priority Date	NONE
Word Mark	OCEAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1973/01/31 First Use In Commerce: 1973/01/31 nasal preparation for dry nasal membranes		

Attachments	00528196.PDF (10 pages)(6457576 bytes)
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Signature	/wdo/
Name	William D. O'Neill
Date	09/10/2007

care preparations, hand and foot deodorant sprays, skin creams, beauty gels, body scrubs, sun tan lotion, sun tan gels, sun tan sprays, sun-block lotions, sun-block gels, sun-block sprays, personal deodorants, shaving preparations, after-shave lotions, after-shave gels, after-shave sprays, shaving creams, shaving foams, shaving gels, shaving lotions, shaving sprays, hair care preparations, hair styling gels, hair styling mousses, shampoos, soaps, non-medicated mouth rinses, toothpaste, teeth whitening sprays, teeth whitening gels, in International Class 3.

As grounds for cancellation, Petitioner alleges on knowledge as to itself and otherwise upon information and belief, as follows:

1. H2Ocean, Inc. (hereinafter referred to as "Respondent") is the record owner of trademark Registration No. 3,074,033 for the mark OCEAN AID SPRAY. To the best of Petitioner's knowledge, Respondent's address is 3533 High Ridge Road, Boynton Beach, Florida 33426.

2. Respondent's Registration No. 3,074,033 was granted on March 28, 2006.

3. Petitioner uses the trademark OCEAN in connection with a line of health and beauty aid products, including OCEAN Premium Saline Nasal Spray, OCEAN Ultra Sterile Saline Mist, OCEAN Complete Sinus Rinse, OCEAN for Kids, and OCEAN Moisturizing Gel.

4. Petitioner owns U.S. Trademark Registration No. 1,652,123 for OCEAN for a nasal preparation for dry nasal membranes. Registration No. 1,652,123 was granted on July 30, 1991. Petitioner filed its application for Registration No. 1,652,123 on April 20, 1990. A copy of a current printout of information from the electronic database records of the United States

Patent and Trademark Office ("USPTO") showing the current status and title of Registration No. 1,652,123 is attached hereto as Exhibit A.

5. Petitioner began using OCEAN in connection with the goods identified in Registration No. 1,652,123 at least as early as January 31, 1973, which is long prior to the February 2, 2004 date that Respondent filed its application for Registration No. 3,074,033.

6. Since at least as early as January 31, 1973 when Petitioner began using OCEAN in connection with the goods identified in Registration No. 1,652,123, Petitioner has continuously used OCEAN in connection with the goods identified in Registration No. 1,652,123 and consumers have come to associate Petitioner's OCEAN mark with the type of goods identified in Registration No. 1,652,123.

Count I: Likelihood of Confusion

7. Petitioner hereby incorporates by reference the allegations in Paragraphs 1 through 6 hereof as if fully set forth herein.

8. Upon information and belief, neither Respondent nor any predecessor or related party of Respondent made commercial use of the trademark OCEAN AID SPRAY for the goods identified in Registration No. 3,074,033 prior to April 5, 2004, the date Respondent stated as its date of first use when it filed its Statement of Use for Registration No. 3,074,033.

9. Petitioner's date of first use in commerce for its OCEAN mark precedes Respondent's date of first use in commerce for its OCEAN AID SPRAY mark.

10. Respondent's use of the trademark OCEAN AID SPRAY is without Petitioner's consent or permission.

11. Respondent's use of the trademark OCEAN AID SPRAY for the goods identified in Registration No. 3,074,033 is likely to cause confusion, mistake or deception as to the source of origin, sponsorship or approval of Respondent's products in that purchasers are likely to believe that Respondent's products are Petitioner's products, or are in some way legitimately connected with, licensed, or approved by Petitioner.

12. Petitioner invested substantial amounts of time, resources, and effort in marketing its goods under the OCEAN mark. As a result of Petitioner's marketing efforts and the substantial sales of Petitioner's OCEAN products, Petitioner's OCEAN mark became well-known to consumers, and came to represent a most valuable goodwill owned by Petitioner, all long prior to February 2, 2004.

13. The Respondent's registration of OCEAN AID SPRAY is and will continue to be damaging to the Petitioner.

Count II: Fraud

14. Petitioner hereby incorporates by reference the allegations in Paragraphs 1 through 13 hereof as if fully set forth herein.

15. Respondent procured Registration No. 3,074,033 for OCEAN AID SPRAY by making material representations of fact, in its Statement of Use for the application, that

Respondent had used the OCEAN AID SPRAY mark on all of the goods it identified in its application.

16. Respondent knew or should have known that it had not used its OCEAN AID SPRAY mark on a material portion of the goods it identified in the application and that these representations were false and misleading.

17. Respondent made these representations to the USPTO with the intent to induce authorized agents of the USPTO to grant Respondent's registration for its OCEAN AID SPRAY mark.

18. The authorized agents of the USPTO reasonably relied upon the truth of Respondent's statements to grant Respondent's registration for the OCEAN AID SPRAY mark and would not have accepted Respondent's registration for the goods identified therein, but for Respondent's misrepresentations.

19. Respondent's Registration No. 3,074,033 for the OCEAN AID SPRAY mark should be cancelled because Respondent committed fraud in the procurement of that Registration.

20. Petitioner will be damaged by the continued existence of Respondent's Registration No. 3,074,033 on the Register because it will give color of rights to Respondent in violation of Petitioner's prior and superior statutory and common law rights in Petitioner's OCEAN mark.

WHEREFORE, registration by Respondent of the aforesaid trademark for the aforesaid goods is damaging to Petitioner and Petitioners prays that for cancellation of Registration No. 3,074,033.

Respectfully submitted,
FLEMING AND COMPANY, PHARMACEUTICALS

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Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-09-10 14:23:44 ET

Serial Number: 74050996 Assignment Information Trademark Document Retrieval

Registration Number: 1652123

Mark (words only): OCEAN

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2001-10-26

Filing Date: 1990-04-20

Transformed into a National Application: No

Registration Date: 1991-07-30

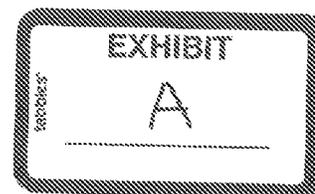
Register: Principal

Law Office Assigned: LAW OFFICE 11

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov.

Current Location: 900 -File Repository (Franconia)

Date In Location: 2001-10-30



LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Fleming and Company, Pharmaceuticals

Address:

Fleming and Company, Pharmaceuticals
1733 Gilsino Lane
Fenton, MO 63026
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Missouri

GOODS AND/OR SERVICES

International Class: 005

Class Status: Active

nasal preparation for dry nasal membranes

Basis: 1(a)

First Use Date: 1973-01-31

First Use in Commerce Date: 1973-01-31

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2001-10-26 - First renewal 10 year

2001-10-26 - Section 8 (10-year) accepted/ Section 9 granted

2001-08-02 - Combined Section 8 (10-year)/Section 9 filed

1997-08-11 - Section 8 (6-year) accepted & Section 15 acknowledged

1997-07-28 - Section 8 (6-year) and Section 15 Filed

1991-07-30 - Registered - Principal Register

1991-05-07 - Published for opposition

1991-04-05 - Notice of publication

1991-01-31 - Approved for Pub - Principal Register (Initial exam)

1990-11-02 - Communication received from applicant

1990-08-29 - Letter of suspension mailed

1990-08-28 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

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No assignment has been recorded at the USPTO

For Serial Number: 74050996

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3050, v.2.0.1
Web interface last modified: April 20, 2007 v.2.0.1

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