

ESTTA Tracking number: **ESTTA190298**

Filing date: **02/01/2008**

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	Alternative Care Systems, Inc., d/b/a Access Nursing Services		
Entity	Corporation	Citizenship	New York
Address	411 Manville Road Pleasantville, NY 10570 UNITED STATES		

Attorney information	Griffith B. Price, Jr. Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P. 901 New York Ave., N.W. Washington, DC 20001-4413 UNITED STATES docketing@finnegan.com, griff.price@finnegan.com, kenneth.leichter@finnegan.com, susannah.klank@finnegan.com Phone:202.408.4000
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Registrations Subject to Cancellation

Registration No	3229311	Registration date	04/17/2007
Registrant	ACCESS NURSES, INC. 5935 Cornerstone Court West, Suite 300 San Diego, CA 92121 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2001/07/00 First Use In Commerce: 2001/07/00 All goods and services in the class are cancelled, namely: NURSE STAFFING SERVICES, NAMELY, HIRING, RECRUITING, PLACEMENT, STAFFING AND CAREER NETWORKING SERVICES FOR TRAVELING AND NON-TRAVELING NURSES

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)		
Registration No	3255217	Registration date	06/26/2007
Registrant	ACCESS NURSES, INC. SUITE 300 5935 CORNERSTONE COURT WEST SAN DIEGO, CA 92121 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2001/07/00 First Use In Commerce: 2001/07/00 All goods and services in the class are cancelled, namely: NURSE STAFFING SERVICES, NAMELY, HIRING, RECRUITING, PLACEMENT, STAFFING AND CAREER NETWORKING SERVICES FOR TRAVELING AND NON-TRAVELING NURSES

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)		
Registration No	3295434	Registration date	09/18/2007
Registrant	ACCESS NURSES, INC. 5935 Cornerstone Court West, Suite 300 San Diego, CA 92121 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2007/03/00 First Use In Commerce: 2007/03/00
All goods and services in the class are cancelled, namely: NURSE STAFFING SERVICES, NAMELY, HIRING, RECRUITING, PLACEMENT, STAFFING AND CAREER NETWORKING SERVICES FOR TRAVELLING AND NON-TRAVELING HEALTHCARE PROFESSIONALS

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2057656	Application Date	03/15/1993
Registration Date	04/29/1997	Foreign Priority Date	NONE
Word Mark	ACCESS NURSING SERVICES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1993/09/01 First Use In Commerce: 1993/09/01 providing nursing personnel to render health care services to patients, excluding educational, counseling, psychological, or consulting services provided to, or related to the professional and personal development of, health care professionals		

Attachments	74368048#TMSN.gif (1 page)(bytes) Access Nursing v Access Nurses Consolidated Petition for Cancellation.pdf (15 pages)(93369 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Griffith B. Price, Jr./
Name	Griffith B. Price, Jr.
Date	02/01/2008

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

<p>ALTERNATIVE CARE SYSTEMS, INC., d/b/a ACCESS NURSING SERVICES,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ACCESS NURSES, INC.,</p> <p style="text-align: center;">Registrant.</p>	<p>Cancellation No. _____</p> <p>Reg. Nos.: 3,229,311 3,255,217 3,295,434</p> <p>Marks: ACCESS NURSES ACCESS NURSES AND DESIGN ACCESS HEALTHCARE</p>
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CONSOLIDATED PETITION FOR CANCELLATION

Petitioner, Alternative Care Systems, Inc., d/b/a Access Nursing Services, a corporation of New York having a principal place of business at 411 Manville Road, Pleasantville, NY 10570 ("Petitioner"), believes that it is being damaged, and will be damaged, by Access Nurses, Inc.'s ("Registrant") continued registration of the ACCESS NURSES, ACCESS NURSES AND DESIGN, and ACCESS HEALTHCARE marks shown in U.S. Registration Nos. 3,229,311, 3,255,217, and 3,295,434 (collectively, Registrant's "ACCESS' Marks"), and hereby petitions to cancel the same. As grounds for cancellation, Petitioner alleges that upon actual knowledge with respect to Petitioner's own acts, and on information and belief as to other matters:

Petitioner's ACCESS NURSING Name and Marks

1. Petitioner Alternative Care Systems, Inc., d/b/a Access Nursing Services, is a corporation of New York having a principal place of business at 411 Manville Road, Pleasantville, NY 10570.

2. Petitioner provides and locates health care personnel, including but not limited to Registered Nurses, Licensed Practical Nurses, and other aides, to care facilities such as hospital, nursing homes, home health care, schools, clinics, insurance companies, corporations and many others. Petitioner provides these services in multiple states.

3. Petitioner has used ACCESS NURSING, ACCESS NURSING SERVICES, and ACCESS (collectively, “the ACCESS NURSING Name and Marks”) since at least as early as 1985 in the course of its business.

4. Petitioner owns U.S. Registration No. 2,057,656 for the ACCESS NURSING SERVICES AND DESIGN mark shown below for “providing nursing personnel to render health care services to patients, excluding educational, counseling, psychological, or consulting services provided to, or related to the professional and personal development of, health care professionals,” in International Class 42. Printouts from the Patent and Trademark Office’s TESS and TARR database of Reg. No. 2,057,656 are attached as Exhibit A.



5. Petitioner’s Reg. No. 2,057,656 is valid and subsisting in Petitioner’s name and, pursuant to the provisions of 15 U.S.C. §§ 1065 and 1115(b), Reg. No. 2,057,656 has become incontestable and therefore constitutes conclusive evidence of the validity of the registered mark and of the registration of the mark, of ACCESS NURSING’s ownership of the registered mark, and of ACCESS NURSING’s exclusive right to use the registered mark in commerce.

6. Since well prior to the filing dates for Application Serial Nos. 78/795,864 (filed January 20, 2006), 78/796,027 (filed January 20, 2006), and 78/793,550 (filed January 18, 2006) which matured into Reg. Nos. 3,229,311, 3,255,217, and 3,295,434, and the dates of first use alleged by Registrant in those Applications, Petitioner has promoted and sold, in the United States, health care professional placing services under the ACCESS NURSING Name and Marks as set forth above. In addition, Petitioner's registration set forth in Paragraph 4 issued well prior to the filing date of Registrant's Applications and the dates of first use alleged by Registrant. Pursuant to 15 U.S.C. § 1057(c), the issuance of Petitioner's Registration conferred nationwide constructive priority of use upon Petitioner as of the date of filing of its Application, and Petitioner's nationwide priority of use predates any first use and/or constructive first use dates alleged by or available to Registrant.

7. Petitioner has expended considerable time and resources marketing and promoting the services under the ACCESS NURSING Name and Marks, and has served many customers over the years under the mark.

8. Petitioner's ACCESS NURSING Name and Marks have been and are widely featured in advertising and promotional materials for Petitioner's services.

9. As a result of Petitioner's continuous use and promotion of the ACCESS NURSING Name and Marks mark over many years, it has acquired valuable rights and good will in the name and marks for Petitioner's services.

Registrant and its "ACCESS" Marks

10. Registrant Access Nurses, Inc., is a corporation of Delaware with an address at 5935 Cornerstone Court West, San Diego, CA 92121.

11. Registrant is listed as the owner of U.S. Registration No. 3,229,311 for the word mark ACCESS NURSES for “nurse staffing services, namely, hiring, recruiting, placement, staffing and career networking services for traveling and non-traveling services,” with a first claimed use date of July, 2001. This registration issued from Application Serial No. 78/795,864, filed under Section 1(a), 15 U.S.C. § 1051(a), on January 20, 2006.

12. Registrant is listed as the owner of U.S. Registration No. 3,255,217 for the ACCESS NURSES AND DESIGN mark shown below for “nurse staffing services, namely, hiring, recruiting, placement, staffing and career networking services for traveling and non-traveling services,” with a first claimed use date of July, 2001. This registration issued from Application Serial No. 78/796,027, filed under Section 1(a), 15 U.S.C. § 1051(a), on January 20, 2006.



13. Registrant is listed as the owner of U.S. Registration No. 3,295,434 for the word mark ACCESS HEALTHCARE for “nurse staffing services, namely, hiring, recruiting, placement, staffing and career networking services for traveling and non-traveling services,” with a first claimed use date of March, 2001. This registration issued from Application Serial No. 78/793,550, filed under Section 1(a), 15 U.S.C. § 1051(a), on January 18, 2006.

Likelihood of Confusion, 15 U.S.C. § 1052(d)

14. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 13.

15. Registrant's "ACCESS" Marks are substantially similar in sound, appearance, connotation, and overall commercial impression to Petitioner's ACCESS NURSING Name and Marks.

16. Registrant's "ACCESS" Marks registrations cover services that are identical and/or closely related to the services of Petitioner, and Petitioner and Registrant are direct competitors or potential competitors in the market for providing those services to health care professionals and the health care industry.

17. Petitioner has continuously used its ACCESS NURSING Name and Marks in commerce in connection with the services identified in Paragraph 2 above since prior to the January 18, 2006 and January 20, 2006 filing dates of Registrant's Applications that matured into Reg. Nos. 3,229,311, 3,255,217, and 3,295,434, and any date of first use claimed therein. Petitioner's pleaded registration issued prior to the January 18, 2006 and January 20, 2006 filing dates of Registrant's Applications that matured into Reg. Nos. 3,229,311, 3,255,217, and 3,295,434, and any date of first use claimed therein. On information and belief, Registrant in fact made no use of any of its subject marks at any time prior to the dates of first use alleged in its applications.

18. Registrant's "ACCESS" Marks so resemble Petitioner's prior used and registered ACCESS NURSING Name and Marks as to be likely, when used in connection with Registrant's services, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, as amended, 15 U.S.C. § 1052(d). Indeed, Registrant's use of the "ACCESS" Marks has caused a number of instances of actual confusion with Petitioner, Petitioner's ACCESS NURSING Name and Marks, and/or Petitioner's services offered in connection with its marks.

WHEREFORE, Petitioner believes that it is being damaged, and will be damaged, by the continued registration of Registrant's ACCESS NURSES, ACCESS NURSES AND DESIGN, and ACCESS HEALTHCARE marks shown in Reg. Nos. 3,229,311, 3,255,217, and 3,295,434, and requests that the Consolidated Petition for Cancellation be sustained, and that the registrations be cancelled.

The \$900 filing fee has been submitted electronically. Any deficiency in the fee should be charged to Deposit Account No. 06-0916.

Respectfully Submitted,

Dated: February 1, 2008

By: /Griffith B. Price, Jr/
Griffith B. Price, Jr.
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
901 New York Avenue, NW
Washington, D.C. 20001-4413
Telephone: (202) 408-4000
Facsimile: (202) 408-4400

Attorney for Petitioner

Alternative Care Systems, Inc., d/b/a
Access Nursing Services

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing CONSOLIDATED PETITION FOR CANCELLATION was served on February 1, 2008 by first class mail, postage prepaid, on Registrant and the following attorney for Registrant:

Access Nurses, Inc.
5935 Cornerstone Court West
San Diego, CA 92121

Michelle A. Hon, Esq.
Duane Morris, LLP
101 West Broadway, Suite 900
San Diego CA 92101

By: /Griffith B. Price, Jr./
Griffith B. Price, Jr.
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
901 New York Avenue, NW
Washington, D.C. 20001-4413
Telephone: (202) 408-4000
Facsimile: (202) 408-4400

Attorney for Petitioner

Alternative Care Systems, Inc., d/b/a
Access Nursing Services

ALTERNATIVE CARE SYSTEMS, INC., d/b/a ACCESS NURSING SERVICES
v. ACCESS NURSES, INC

CONSOLIDATED PETITION FOR CANCELLATION

Exhibit A



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Word Mark	ACCESS NURSING SERVICES
Goods and Services	IC 042. US 100 101. G & S: providing nursing personnel to render health care services to patients, excluding educational, counseling, psychological, or consulting services provided to, or related to the professional and personal development of, health care professionals. FIRST USE: 19930901. FIRST USE IN COMMERCE: 19930901
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	17.07.25 - Geiger counters; Metal detectors (hand-held); Seismograph; Windsock 24.15.25 - Other arrows 26.11.21 - Rectangles that are completely or partially shaded 26.17.10 - Lines, zig-zag; Zig-zag line(s)
Serial Number	74368048
Filing Date	March 15, 1993
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	September 28, 1993
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	2057656
Registration Date	April 29, 1997
Owner	(REGISTRANT) Alternative Care Systems, Inc. CORPORATION NEW YORK 411 Manville Road Pleasantville NEW YORK 10570

Attorney of Record Christopher P. Foley, Esq.
 Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "NURSING SERVICES" APART FROM THE MARK AS SHOWN
 Type of Mark SERVICE MARK
 Register PRINCIPAL
 Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20070522.
 Renewal 1ST RENEWAL 20070522
 Live/Dead Indicator LIVE

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Serial Number: 74368048 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2057656

Mark



(words only): ACCESS NURSING SERVICES

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2007-05-22

Filing Date: 1993-03-15

Transformed into a National Application: No

Registration Date: 1997-04-29

Register: Principal

Law Office Assigned: LAW OFFICE 103

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: 830 -Post Registration

Date In Location: 2007-05-22

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

1. Alternative Care Systems, Inc.

Address:

Alternative Care Systems, Inc.

411 Manville Road

Pleasantville, NY 10570
United States
Legal Entity Type: Corporation
State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 042
Class Status: Active
providing nursing personnel to render health care services to patients, excluding educational, counseling, psychological, or consulting services provided to, or related to the professional and personal development of, health care professionals
Basis: 1(a)
First Use Date: 1993-09-01
First Use in Commerce Date: 1993-09-01

ADDITIONAL INFORMATION

Disclaimer: "NURSING SERVICES"

Design Search Code(s):
17.07.25 - Geiger counters; Metal detectors (hand-held); Seismograph; Windsock
24.15.25 - Other arrows
26.11.21 - Rectangles that are completely or partially shaded
26.17.10 - Lines, zig-zag; Zig-zag line(s)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-05-22 - First renewal 10 year
2007-05-22 - Section 8 (10-year) accepted/ Section 9 granted
2007-05-17 - Assigned To Paralegal
2007-04-17 - Combined Section 8 (10-year)/Section 9 filed
2007-04-17 - TEAS Section 8 & 9 Received
2006-12-15 - Case File In TICRS
2004-04-02 - Section 8 (6-year) accepted & Section 15 acknowledged

2004-03-08 - Response received to Post Registration action - Sections 8 & 15

2004-01-23 - Post Registration action mailed Section 8 & 15

2003-10-27 - Section 8 (6-year) and Section 15 Filed

2003-10-23 - Section 8 (6-year) and Section 15 Filed

1997-10-24 - Section 7 correction issued

1997-05-30 - Section 7 amendment filed

1997-04-29 - Registered - Principal Register

1997-03-07 - Allowed for Registration - Principal Register (SOU accepted)

1997-03-07 - Assigned To Examiner

1997-02-27 - Statement of use processing complete

1997-01-16 - Amendment to Use filed

1996-11-03 - Extension 1 granted

1996-08-06 - Extension 1 filed

1996-02-06 - Notice of allowance - mailed

1995-10-05 - Opposition terminated for Proceeding

1995-10-03 - Opposition dismissed for Proceeding

1994-05-20 - Opposition instituted for Proceeding

1994-01-31 - Opposition papers filed

1993-10-28 - Extension Of Time To Oppose Received

1993-09-28 - Published for opposition

1993-08-27 - Notice of publication

1993-07-15 - Approved for Pub - Principal Register (Initial exam)

1993-07-06 - Examiner's amendment mailed

1993-06-21 - Assigned To Examiner

1993-06-16 - Assigned To Examiner

1993-06-14 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Christopher P. Foley, Esq.

Correspondent

Christopher P. Foley, Esq.

Finnegan, Henderson, Farabow, Garrett &

901 New York Avenue, NW

Washington DC 20001

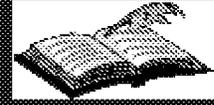
Phone Number: 2024084000

Fax Number: 2024084400



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No assignment has been recorded at the USPTO

For Serial Number: 74368048

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Web interface last modified: April 20, 2007 v.2.0.1

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