

ESTTA Tracking number: **ESTTA211934**

Filing date: **05/15/2008**

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    | Quantum, Inc.  |             |        |
| Entity  | Corporation  | Citizenship | Oregon |
| Address | 754 Washington Street<br>Eugene, OR 97401<br>UNITED STATES |             |        |

|                      |   |
|----------------------|---|
| Attorney information | Jeffrey S. Love<br>Klarquist Sparkman, LLP<br>121 SW Salmon Street Suite 1600<br>Portland, OR 97204<br>UNITED STATES<br>PTOTMdoCKET@klarquist.com, jeffrey.love@klarquist.com,<br>david.petersen@klarquist.com, linda.schroeder@klarquist.com<br>Phone:503-595-5300 |
|----------------------|---|

### Registration Subject to Cancellation

|                 |  |                   |            |
|-----------------|--|-------------------|------------|
| Registration No | 1538900  | Registration date | 05/16/1989 |
| Registrant      | INTERSTATE DRUG EXCHANGE<br>1500 NEW HORIZONS BOULEVARD<br>AMITYVILLE, NY 11701<br>UNITED STATES |                   |            |

### Goods/Services Subject to Cancellation

|  |
|--|
| Class 005. First Use: 1988/06/00 First Use In Commerce: 1988/06/00<br>All goods and services in the class are cancelled, namely: ORAL SALIVA STIMULANT |
|--|

### Grounds for Cancellation

|             |                          |
|-------------|--------------------------|
| Abandonment | Trademark Act section 14 |
|-------------|--------------------------|

|             |  |
|-------------|--|
| Attachments | Quantum Petition for Cancellation.pdf ( 4 pages )(119552 bytes ) |
|-------------|--|

## 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 | /Jeffrey S. Love/ |
| Name      | Jeffrey S. Love   |

|      |            |
|------|------------|
| Date | 05/15/2008 |
|------|------------|

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

In the Matter of Registration No. 1,538,900  
Date of Issue: May 16, 1989  
Mark: ORAL-MOIST  
International Class 5

Quantum, Inc. )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 Phytos, Inc., )  
 )  
 Respondent. )  
\_\_\_\_\_ )

**Cancellation No.:** \_\_\_\_\_

COMMISSIONER FOR PATENTS  
PO BOX 1450  
ALEXANDRIA, VA 22313-1450

TO THE HONORABLE COMMISSIONER FOR TRADEMARKS:

**PETITION FOR CANCELLATION**

Quantum, Inc., an Oregon corporation with a place of business located at 754 Washington Street, Eugene, OR 97401, believes that it will be damaged by Registration No. 1,538,900, and hereby petitions to cancel same.

As grounds therefore, it is alleged that:

1. Since at least as early as March 21, 2008, Quantum, Inc. has been selling in interstate commerce sustained release dissolvable transdermal patches for relief of dry mouth under the mark ORAMOIST.
2. Quantum, Inc. has applied under Serial No. 77/195,784 to register "ORAMOIST" for "sustained release dissolvable transdermal patch for relief of dry mouth," in International

Class 5.

3. Although Applicant disagrees with the position taken by the U.S. Patent and Trademark Office, Application Serial No. 77/195,784 has been refused registration on the grounds that the mark shown in this application, when used on the identified goods, is likely to be confused with the mark shown in Registration No. 1,538,900.

4. Phytos, Inc. is the owner of record by assignment recorded with the Patent and Trademark Office of Registration No. 1,538,900, issued May 16, 1989, on the Principal Register for "ORAL-MOIST" for "oral saliva stimulant" in International Class 5.

5. On information and belief, Phytos, Inc. is a suspended California corporation that has discontinued its use and abandoned its right in the mark "ORAL-MOIST" for "oral saliva stimulant." Set forth below are links to the California Secretary of State's website and to Google searches, showing that the California Secretary of State's office lists Phytos, Inc. as a "suspended" corporation, and that Google searches (which were conducted on May 14, 2008) found no results for "oral-moist" and either "phytos" or "oral saliva stimulant":

<http://kepler.sos.ca.gov/corpdata/ShowList>

| Corp Number | Date Filed | Status    | Corporation Name | Agent for Service of Process |
|-------------|------------|-----------|------------------|------------------------------|
| C1945913    | 8/11/1995  | suspended | PHYTOS, INC.     | PHILIP E WOLFSON             |

| Corporation              |                       |                   |
|--------------------------|-----------------------|-------------------|
| PHYTOS, INC.             |                       |                   |
| Number: C1945913         | Date Filed: 8/11/1995 | Status: suspended |
| Jurisdiction: California |                       |                   |
| Address                  |                       |                   |
| 6 CREST ROAD             |                       |                   |

|                                     |
|-------------------------------------|
| SAN ANSELMO, CA 94960               |
| <b>Agent for Service of Process</b> |
| PHILIP E WOLFSON                    |
| 6 CREST ROAD                        |
| SAN ANSELMO, CA 94960               |

<http://www.google.com/search?hl=en&q=%22ORAL-MOIST%22+phytos>

Your search - "**ORAL-MOIST**" **phytos** - did not match any documents.

<http://www.google.com/search?hl=en&q=%22ORAL-MOIST%22+%22ORAL+SALIVA+STIMULANT%22>

Your search - "**ORAL-MOIST**" "**ORAL SALIVA STIMULANT**" - did not match any documents.

6. If Phytos, Inc. is permitted to maintain Registration No. 1,538,900, Petitioner may be unable to register its "ORAMOIST" application for "sustained release dissolvable transdermal patch for relief of dry mouth," resulting in damage and injury to Quantum, Inc.

7. As long as Registrant's mark remains on the Principal Register, Registrant is granted at least a *prima facie* exclusive right to use this mark, thus creating a cloud over Quantum, Inc.'s ability to register and use its "ORAMOIST" mark for "sustained release dissolvable transdermal patch for relief of dry mouth."

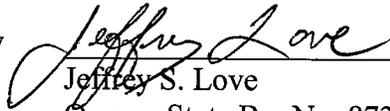
Wherefore, Quantum, Inc. requests that Registration No. 1,538,900 be cancelled from the Principal Register.

Mark: ORAL-MOIST  
Reg. No. 1,538,900  
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Dated: May 15, 2008

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By   
Jeffrey S. Love  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this paper is being served upon all parties on the date indicated above, by first-class mail via the United States Postal Service Office at their addresses of record:

Phytos, Inc.  
6 Crest Road  
San Anselmo, CA 94960

  
Jeffrey S. Love