

ESTTA Tracking number: **ESTTA259654**

Filing date: **01/09/2009**

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	Myomed, Inc		
Entity	Corporation	Citizenship	Nebraska
Address	14503 Grover St STE 102 Omaha, NE 68144 UNITED STATES		

Correspondence information	Mitchell Sims President Myomed, Inc 14503 Grover St STE 102 Omaha, NE 68144 UNITED STATES msims@myomedpro.com, msims@national-insurance.com Phone:402-408-9335
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Registration Subject to Cancellation

Registration No	3402453	Registration date	03/25/2008
Registrant	BIOFORCE, INC. 881 WEST STATE STREET #140-114 PLEASANT GROVE, UT 84062 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2007/02/00 First Use In Commerce: 2007/02/00 All goods and services in the class are cancelled, namely: Medicated body lotion for massage and physical therapy

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. Application No.	77289568	Application Date	09/26/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MYOMED P.R.O.		

Design Mark	MyoMed P.R.O.
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2005/08/01 First Use In Commerce: 2005/10/03 Pain relief medication

Attachments	77289568#TMSN.jpeg (1 page)(bytes) Petition to cancel myo-med .pdf (5 pages)(26218 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	/Mitchell S. Sims/
Name	Mitchell Sims
Date	01/09/2009

The grounds for cancellation are as follows:

1. Myomed, Inc. is engaged in the business of marketing, distributing, advertising and selling products under the **MYOMED. P.R.O.** title (Serial No.: 77/289,568).

2. Trademark Reg. No. 3,402,453 (**MYO-MED**) shows a filing date of October 23, 2006. Further, on Trademark Reg. No. 3,402,453 (**MYO-MED**), shows a First Use Date of February, 2007 and a First Use in Commerce Date of February, 2007 as well. As a corporation, BioForce, Inc. (Current owner of Reg. No. 3,402,453 (**MYO-MED**)) was registered as a corporation in the state of Utah on January 25, 2007. Also, the original owner of Reg. No. 3,402,453 (**MYO-MED**), AG SPORTS, LLC was registered as a corporation in the state of Utah on August 11, 2006.

3. However, Myomed, Inc. adopted and used the mark described in Paragraph 1 (*i.e.*, **MYOMED. P.R.O.**, Serial No.: 77/289,568) in connection with advertising, distributing, marketing and selling our product, MyoMed P.R.O, at an earlier date. Myomed, Inc. first adopted and used the mark **MYOMED P.R.O.** at least as early as August 1, 2005 (First Used in Commerce Date at least as early as October 3, 2005); thereby substantially predating the Applicant's application. Myomed, Inc. shows on application 77/289,568 that its first use date was August 1, 2005 and it's first use in commerce date was October 3, 2005. Furthermore, application 77/289,568 is filed in International Class 5 and registered as **MYOMED P.R.O.** for "*Pain Relief Medication.*" Finally, Myomed, Inc. was registered with the state of Nebraska as a corporation on October 3, 2005. As a filed corporate business entity, Myomed, Inc. precedes current

registration owner's corporate registration by nearly sixteen months, and the original registration owner's corporate registration by over 10 months.

4. The current registration owner's mark (and goods and services use) is virtually identical to Myomed, Inc.'s Mark, **MYOMED P.R.O.** Since the adoption and first use of the **MYOMED P.R.O.** Mark, Myomed, Inc. has made substantial and continuous use of the **MYOMED P.R.O.** Mark in interstate commerce on and in connection with the development, creation, advertisement, promotion, distribution, and sale of its product in the marketplace.

5. The **MYOMED P.R.O.** Marks are, and since their first use have been, applied to Myomed Inc.'s products. These Myomed, Inc. products bearing the **MYOMED P.R.O.** Marks are now and have been advertised, promoted, and widely shipped, distributed, and sold in interstate commerce. **The MYOMED P.R.O.** Mark is strong, well known, and of substantial value to Myomed, Inc. In the mind of the trade and of the public, the **MYOMED P.R.O.** Mark is identified with Myomed, Inc.'s products, goods, and services and distinguishes them from the products, goods, and services of others.

6. The current registration owner's mark **MYO-MED** so resembles Myomed, Inc.'s. previously used and applied for **MYOMED P.R.O.** Mark, when used in connection with Applicant's goods and services, that it is causing confusion, mistake, or deception which results in injury to Myomed, Inc. and the public.

7. Myomed, Inc. is being damaged by the Registration No. 3,402,453 (**MYO-MED**) currently owned by BioForce, Inc., because such registration supports and assists current owner in the confusing, misleading, and deceptive use of their **MYO-**

MED mark and would give the current owner the color or exclusive statutory rights to such designation in violation of Myomed, Inc's. superior rights.

8. WHEREFORE, Myomed, Inc. believes that they have been, are, and/or will be damaged by the said registration and prays that it be cancelled.

Dated: January 8, 2009

Respectfully submitted,

Myomed, Inc.



By:

Mitchell Sims
President
Myomed, Inc.
14503 Grover St. STE 102
Omaha, Nebraska 68144
(402) 408-9335

Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petition for Cancellation has been served on BioForce, Inc. by mailing said copy on January 9, 2009, via First Class Certified Mail, postage prepaid to:

Jared M. Richards
Bennett Tueller Johnson & Deere
3165 Millrock Dr. STE 500
Salt Lake City UT 84121-4704

By:



Mitchell S. Sims
President
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