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

Proceeding	92050511
Party	Plaintiff Max-Wellness, LLC
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	02/18/2009
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No.: 2,664,034

For the Mark: MAX WELL MEDICAL

Date of Issue: December 17, 2002

<i>MAX-WELLNESS, LLC,</i>)	
)	
Petitioner,)	Cancellation No.: 92/050,511
)	
v.)	
)	
<i>MAX WELL MEDICAL, INC.,</i>)	
)	
Registrant.)	

AMENDED PETITION FOR CANCELLATION

Petitioner Max-Wellness, LLC is a Delaware limited liability company with its principal place of business at 5900 Landerbrook Drive, Suite 203, Cleveland, Ohio 44124. Petitioner believes that it is being, has been and will be damaged by the continued existence of the above-referenced registration on the Principal Register, and hereby petitions for the cancellation of that registration.

The amended grounds for cancellation are alleged as follows:

1. Registrant, Max-Well Medical, Inc., is identified in the records of the Trademark Office as the owner of record of U.S. Trademark Registration No. 2,664,034 (the “034 Registration”) for the mark MAX WELL MEDICAL in International Class 035 for “mail order services featuring diabetic supplies.” The pertinent assignment records of the Trademark Office indicate that Registrant is the assignee of the original registrant, Max Well Medical, LLC.

2. Petitioner is the owner of record of the currently pending U.S. Trademark Application No. 77/616,845 (the “845 Application”), which has been made on an intent-to-use basis and requests registration of the mark MAX-WELLNESS in International Class 035 for “retail store services, mail order catalog services, computerized on-line ordering services, and direct response retail services by means of print advertisements, featuring health foods, dietary supplements, herbs, nutritional supplements, sports nutrition products, vitamins, health and

beauty care products, fitness products, cosmetics, body care products, exercise products, personal healthcare items, aromatherapy products and homeopathic products.”

3. The ‘034 Registration was issued on December 17, 2002. Registrant failed to make the filing required by Section 8 that was due by December 17, 2008. If maintenance action is not taken by the end of the grace period on June 17, 2009, the ‘034 Registration will lapse.

4. A general investigation authorized by Petitioner, including a search of the internet, reveals no current use in commerce of the MAX WELL MEDICAL mark on or in connection with the mail order services identified in the ‘034 Registration. This investigation uncovered that the once active www.maxwellmedical.com website owned by Registrant became inactive at least as early as November of 2007, either prior to, contemporaneous with or subsequent to the acquisition of Registrant by another company whose identity or current address is not reflected in the records of the Trademark Office.

5. On information and belief, the mark MAX WELL MEDICAL is no longer in use in commerce by or on behalf of Registrant or its successor-in-interest on or in connection with the services described in the ‘034 Registration.

6. On information and belief, use in commerce of the mark MAX WELL MEDICAL by or on behalf of Registrant or its successor-in-interest has been discontinued on or in connection with the services identified in the ‘034 Registration with an intent not to resume use.

7. On information and belief, the mark MAX WELL MEDICAL has been abandoned and the ‘034 Registration is subject to cancellation pursuant to 15 U.S.C. § 1064(3).

8. The continued existence of the ‘034 Registration despite abandonment of the mark MAX WELL MEDICAL casts a cloud on Petitioner’s own right to use and develop trade designations incorporating the terms MAX WELL as a name or mark for retail store, mail order, and on-line ordering services in the United States, and, as such is and would continue to be a source of damage and injury to Petitioner.

9. The continued existence of the ‘034 Registration despite abandonment of the mark MAX WELL MEDICAL may prevent Petitioner from obtaining a registration for the mark MAX-WELLNESS on the basis of the ‘845 Application, and, as such is likely to be a source of injury to Petitioner.

WHEREFORE, Petitioner believes that it is being, has been and will be damaged by the '034 Registration and prays that each be cancelled and that this Petition for Cancellation be granted.

Respectfully submitted,

/Raymond Rundelli/
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Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **AMENDED PETITION FOR CANCELLATION** was served on Registrant at the address indicated in the records of the U.S. Patent and Trademark Office by first class mail, postage prepaid, this 18th day of February, 2009, in an envelope addressed as follows:

Max Well Medical, LLC and/or its assignee, Max Well Medical, Inc.
240 Cumberland Bend
Nashville, TN 372281804

/Raymond Rundelli/
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