

ESTTA Tracking number: **ESTTA289793**

Filing date: **06/15/2009**

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 parties request to cancel indicated registration.

Petitioner Information

Name	Pennington Seed, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	P. O. Box 290 Madison, GA 30650 UNITED STATES		

Name	Pennington Seed, Inc. of Nebraska		
Entity	Corporation	Citizenship	Nebraska
Address	P. O. Box 290 Madison, GA 30650 UNITED STATES		

Attorney information	Marcy Sperry Womble Carlyle Sandridge & Rice, PLLC 271 17th Street, NW Suite 2400 Atlanta, GA 30363-1017 UNITED STATES atltrademarks@wcsr.com		
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Registration Subject to Cancellation

Registration No	3632062	Registration date	06/02/2009
Registrant	OMS Investments, Inc. 10250 Constellation Blvd., Suite 2800 Los Angeles, CA 90067 UNITED STATES		

Goods/Services Subject to Cancellation

Class 001. First Use: 2009/01/31 First Use In Commerce: 2009/01/31 All goods and services in the class are cancelled, namely: Soil amendments, soil conditioners, and soil improving agents for domestic and horticultural use; plant food; potting soil; planting soil; growing media for plants; peat; compost

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Related Proceedings	91186723; 91186718; 91187785; 92050878
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3474131	Application Date	09/08/2006
Registration Date	07/22/2008	Foreign Priority Date	NONE
Word Mark	WATER STAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Grass seed		

U.S. Application No.	77485049	Application Date	05/28/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	WATER STAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: Fertilizers and soils, namely, planting soil; soil amendments		

U.S. Registration No.	3615524	Application Date	09/25/2008
Registration Date	05/05/2009	Foreign Priority Date	NONE
Word Mark	PENNINGTON SEED SMART SEED		

Design Mark			
Description of Mark	The mark consists of the stylized wording "PENNINGTON SEED" in a half circle, and the stylized wording "SMART SEED" below it. The half circle containing the wording also contains design elements that include three leaves and sun rays. The shading appearing in the drawing is an element of the mark.		
Goods/Services	Class 031. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 grass seed		

U.S. Registration No.	3544275	Application Date	03/28/2007
Registration Date	12/09/2008	Foreign Priority Date	NONE
Word Mark	PENNINGTON SEED SMART SEED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 2008/01/00 First Use In Commerce: 2008/01/00 Grass seed		

Attachments	78969795#TMSN.jpeg (1 page)(bytes) 77485049#TMSN.jpeg (1 page)(bytes) 77578909#TMSN.jpeg (1 page)(bytes) 77142121#TMSN.jpeg (1 page)(bytes) Petition to Cancel.pdf (5 pages)(129647 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	/Marcy Sperry/
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Name	Marcy Sperry
Date	06/15/2009

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

In re Registration No. 3,632,062
Mark: WATER SMART
Registrant: OMS Investments, Inc.

Pennington Seed, Inc. and)	
Pennington Seed, Inc. of Nebraska,)	
)	
Petitioners,)	
)	
v.)	Cancellation No. _____
)	
OMS Investments, Inc.,)	
)	
Registrant.)	

PETITION FOR CANCELLATION

Petitioners, Pennington Seed, Inc., a Delaware corporation located and doing business in Madison, Georgia, and Pennington Seed, Inc. of Nebraska, a Nebraska corporation located and doing business in Madison, Georgia, (“Petitioners”), hereby petition for cancellation of Registration No. 3,632,062 for the mark WATER SMART, owned by OMS Investments, Inc. (“Registrant”). The specific grounds for the cancellation are as follows:

1. Registrant is a Delaware corporation located and doing business at 10250 Constellation Blvd., Suite 2800, Los Angeles, California 90067.
2. The records of the Trademark Office show that the registration sought to be cancelled is Registration No. 3,632,062 for the mark WATER SMART for “Soil amendments, soil conditioners, and soil improving agents for domestic and horticultural use; plant food; potting soil; planting soil; growing media for plants; peat; compost” in

International Class 1, which issued as a registration on June 2, 2009 (“Registrant’s Mark”).

3. Registrant claims a date of first use in commerce of January 31, 2009 for the goods identified in the Registration sought to be cancelled.

4. Petitioner Pennington Seed, Inc. of Nebraska is the owner of the following:

(a) United States Trademark Registration No. 3,474,131, filed September 8, 2006 and registered on July 22, 2008, for the mark WATER STAR in connection with “grass seed” in International Class 31;

(b) United States Trademark Application Serial No. 77/485,049, filed May 28, 2008, for the mark WATER STAR in connection with “fertilizers and soils, namely, planting soil; soil amendments” in International Class 1;

(c) United States Registration No. 3,544,275, filed March 28, 2007 and registered on December 9, 2008, for the mark PENNINGTON SEED SMART SEED in connection with “grass seed” in International Class 31;

(d) United States Registration No. 3,615,524, filed September 25, 2008 and registered on May 5, 2009, for the mark PENNINGTON SEED SMART SEED & Design in connection with “grass seed” in International Class 31; and

(e) The marks referred to in Section 4(a) - 4(d) are hereinafter collectively referred to as “Petitioners’ Marks.”

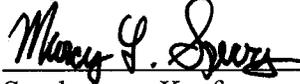
5. Petitioner Pennington Seed, Inc. is using Petitioners’ Marks in commerce in connection with grass seed and intends to use Petitioners’ WATER STAR Mark in commerce in connection with fertilizers and soils, namely, planting soil; soil amendments.

6. Petitioner Pennington Seed, Inc.'s use of Petitioners' Marks, referenced in Sections 4(a), 4(c), and 4(d), in commerce commenced at least as early as January, 2008 and such use has been valid and continuous since its date of first use.
7. Petitioners' Marks are valid, distinctive, famous, and well-known.
8. Registrant's Mark so resembles Petitioners' Marks as to be likely to cause confusion or to cause mistake or to deceive.
9. On information and belief, the goods offered by Registrant under Registrant's Mark are similar to the goods offered by Petitioners under Petitioners' Marks and are marketed to the same or the same type of customers.
10. Registrant's Mark dilutes the distinctive quality of Petitioners' Marks.
11. Petitioners will be damaged and irreparably injured if registration is granted to Registrant for Registrant's Mark.
12. For the reasons set forth above, registration of Registrant's Mark should be denied.

WHEREFORE, Petitioners pray for cancellation of Registration No. 3,632,062, and that this Petition be granted in favor of Petitioners.

This 15th day of June, 2009.

Respectfully submitted,



Sarah Anne Keefe

Marcy L. Sperry

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Attorneys For Petitioners, Pennington Seed, Inc. and
Pennington Seed, Inc. of Nebraska

CERTIFICATE OF MAILING

I hereby certify that on June 15, 2009, I filed via electronic means (ESTTA) this PETITION FOR CANCELLATION with the:

U. S. Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

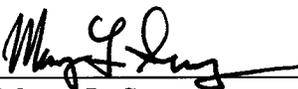


Marcy L. Sperry

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITION FOR CANCELLATION has been served on Registrant's counsel by mailing said copy on June 15, 2009, via First Class Mail, postage prepaid to:

Ms. Susan E. Hollander
Manatt, Phelps & Phillips, LLP
1001 Page Mill Road, Building 2
Palo Alto, California 94304



Marcy L. Sperry