

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

In the Matter of Registration No. 3,467,675
Mark: "FIRST LINE THERAPY"
Date of Issue: July 15, 2008

1/349, 568

EVERETT W. JAMES aka TAD JAMES,)
)
) Petitioner,)
)
) v.)
)
) METAGENICS, INC.,)
)
) Registrant.)
)
)

Cancellation No. _____



03-14-2011

PETITION FOR CANCELLATION

U.S. Patent & TMO/PTM Mail Rpt. Ct. #30

EVERETT W. JAMES, a United States citizen ("**Petitioner**"), having a business address at 1453 Foothills Village Drive, Henderson, Nevada 89012, believes he has been and will be damaged by U.S. Registration 3,467,675 (the "**Registration**") for "FIRST LINE THERAPY" (the "**Registrant's Mark**"), which issued to METAGENICS, INC., a Delaware corporation ("**Registrant**"), whose mailing address is 100 Avenida La Pata, San Clemente, California 92673, on July 15, 2008, and hereby petitions to cancel the same.

As grounds therefor, Petitioner alleges as follows:

1. Petitioner is the holder of the following U.S. Trademark Registrations for his mark "TIME LINE THERAPY" ("**Petitioner's Mark**"), which registrations have become incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065:

03/17/2011 HPHAM1 00000012 3467675
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01 FC:6401

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Martin E. Hsia

32,471

Date: 3/10/11

(a) Registration No. 1,818,198 for "educational services; namely, conducting classes and seminars in the field of self-improvement" in International Class 41, issued on January 25, 1994; and

(b) Registration No. 1,890,438 for "prerecorded video tapes featuring lectures in the field of self-improvement and prerecorded audio tapes featuring lectures in the field of self-improvement" in International Class 9, issued on April 18, 1995.

2. Petitioner also owns various U.S. trademark registrations, and has filed applications for Petitioner's Mark, including (without limitation) the following:

(a) U.S. Registration No. 3,596,997 for "Audio recordings featuring lectures in the field of self-improvement and video recordings featuring lectures in the field of self-improvement," in International Class 9, issued on March 31, 2009;

(b) U.S. Trademark Application Serial No. 77/851,026 for " Educational services, namely providing on-line non-downloadable audio lectures in the field of self-improvement; and educational services, namely providing on-line non-downloadable video lectures in the field of self-improvement" in International Class 41, filed on October 16, 2009; and

(c) U.S. Trademark Application Serial No. 77/851,033 for "TIME LINE THERAPY" covering "Audio recordings featuring lectures in the field of self-improvement; downloadable audio recordings featuring lectures in the field of self-improvement; video recordings in the field of self-improvement; downloadable video recordings in the field of self-improvement; and media players" in International Class 9, filed on October 16, 2009.

3. The goods and services covered by Petitioner's registrations for "TIME LINE THERAPY" are collectively referred to herein as the "**Petitioner's Goods and Services.**"

4. Petitioner's registrations are valid and subsisting and remain in full force and effect, as evidence of the validity, and of Petitioner's exclusive ownership of, and the right to use, "TIME LINE THERAPY," or any mark confusingly similar thereto, or which causes the dilution thereof, for Petitioner's Goods and Services and all goods and/or services related thereto.

5. Petitioner's registrations do not contain any restrictions as to trade channels or purchasers.

6. For many years, Petitioner has continuously advertised, sold and distributed Petitioner's Goods and Services in commerce under his mark "TIME LINE THERAPY" throughout the United States and the World. Petitioner has developed an exceedingly valuable goodwill with respect to his mark "TIME LINE THERAPY."

7. Since at least as early as September 1987, Petitioner has had extensive, exclusive, and continuous use in commerce of Petitioner's Mark in connection with educational services; namely, conducting classes and seminars in the field of self-improvement.

8. Since at least as early as July 1989, Petitioner has had extensive, exclusive, and continuous use in commerce of Petitioner's Mark in connection with prerecorded video tapes featuring lectures in the field of self-improvement and prerecorded audio tapes featuring lectures in the field of self-improvement.

9. Petitioner has also acquired common law rights to the mark, "TIME LINE THERAPY", in connection with classes and seminars in the field of self-improvement.

10. By virtue of his efforts, the expenditure of considerable sums for advertising and promotional activities, and by virtue of the excellence of Petitioner's Goods and Services, Petitioner has gained for his mark "TIME LINE THERAPY" a most valuable reputation.

11. Petitioner's Mark, "TIME LINE THERAPY," is famous under 15 U.S.C. § 1125(c)(1).

12. Petitioner's Mark, "TIME LINE THERAPY," is famous as to educational services; namely, conducting classes and seminars in the field of self-improvement, and as to prerecorded video tapes featuring lectures in the field of self-improvement and prerecorded audio tapes featuring lectures in the field of self-improvement under 15 U.S.C. § 1125(c)(1).

13. On December 12, 2007, on information and belief, Registrant filed with the U.S. Patent and Trademark Office (the "**Office**") trademark application serial no. 77/349868 for registration of Registrant's Mark, "FIRST LINE THERAPY" (the "**Application**").

14. On or about July 15, 2008, U.S. Registration No. 3,467,675 was issued to Registrant (the "**Registration**").

15. The Registration covers "Printed educational materials and printed practice management materials for healthcare practitioners, namely, printed books for patient education on the subject of health and nutrition, printed books for practice management on the subjects of health and nutrition, printed books for professional education on the subjects of health and nutrition, posters and brochures for patient education and professional education on the subjects of health and nutrition," in International Class 16 and "Educational and practice management seminars for healthcare practitioners in the fields of health and nutrition," in International Class 41 (collectively, "**Registrant's Goods and Services**").

16. The Registration is not restricted as to channels of trade or purchasers.

17. Registrant's Goods and Services are related to Petitioner's Goods and Services.

18. Registrant's "Educational and practice management seminars for healthcare practitioners in the fields of health and nutrition," in International class 41 are related to

Petitioner's "Educational services; namely, conducting classes and seminars in the field of self-improvement," in International class 41.

19. Consumers are likely to be confused as to whether the source of Registrant's Goods and Services and the source of Petitioner's Goods and Services are the same, or are related or otherwise affiliated to one another.

20. The circumstances surrounding and otherwise pertaining to the marketing of Registrant's Goods and Services and Petitioner's Goods and Services are such that said goods and/or services are likely to be encountered by the same persons under circumstances that would give rise to the mistaken belief that they originate from the same source.

21. Educational services in the field of health and nutrition and educational services in the field of self-improvement are often marketed and sold under the same mark, as shown by U.S. Trademark Registration No. 3,596,638 for "RIVERBEND COMMUNICATIONS" for "*Education* and entertainment *services*, namely, radio programming services and production of radio programs in the field of news, sports, current events, music; educational services, namely, forums, workshops, seminars and programs *in the field of* personal finance, real estate, business, *health and nutrition*, religion, *self-improvement* and entertainment in the nature of online computer games and contests via radio, Internet, and satellite systems; providing information in the field of news, sports, current events, music, and education and entertainment via radio, Internet, and satellite systems," in International Class 41, a true and correct copy of which is attached hereto as Exhibit "A" (emphasis added).

22. Registrant's books and brochures and Petitioner's audio-recordings and video recordings are often marketed and sold under the same mark, as shown by:

(a) U.S. Trademark Registration No. 3,861,097 for "ANYTHING IS POSSIBLE" for "*Audio and video recordings* featuring content in the fields of psychological self-help, self awareness, and the power of positive thinking," in International Class 9 and "*Books* in the fields of psychological self-help, self awareness, and the power of positive thinking; Printed instructional, educational, and teaching materials in the field of psychological self-help, self awareness, and the power of positive thinking; Posters," in International class 16, a true and correct copy of which is attached hereto as Exhibit "B" (emphasis added);

(b) U.S. Trademark Registration No. 3,871,764 for "SINGIN' & SINGIN'" for "Computer software featuring musical sound recordings and *musical video recordings*; Educational kit comprising DVDs featuring secondary level curriculum on all scientific disciplines, along with teacher guides, sold as a unit; Educational software featuring instruction in mathematics," in International Class 9 and " Educational and learning publications, namely, booklets and flash cards on a variety of educational disciplines in pre-school through eighth grade; Educational kits sold as a unit in the field of mathematics consisting primarily of educational *books*, flash cards and worksheets, and also including an educational DVD; Printed educational materials in the field of mathematics; Printed instructional, educational, and teaching materials in the field of mathematics.," in International class 16, a true and correct copy of which is attached hereto as Exhibit "C" (emphasis added); and

(c) U.S. Trademark Registration No. 3,903,506 for "CREATING IRRESISTIBLE CONNECTIONS" for " Downloadable educational *audio* files, text files and *video* materials in the field of personal relationships and dating and romance " in International Class 9 and " *Books, brochures*, printed educational material providing information in the field

of personal relationships and dating and romance," in International class 16, a true and correct copy of which is attached hereto as Exhibit "D" (emphasis added).

23. Two of the three words in Registrant's Mark and Petitioner's Mark are identical, namely, "LINE" and "THERAPY."

24. "First" is a concept that is related to "Time." See Exhibit "E" (stating that "First" means "preceding all others in *time*, order or importance.") (emphasis added).

25. Registrant's Mark "FIRST LINE THERAPY" is confusingly similar to Petitioner's Mark "TIME LINE THERAPY."

26. Registrant also holds U.S. Registration 2,818,514 for Registrant's Mark covering Registrant's Goods and Services, which issued on the Supplemental Register on February 24, 2004 (the "**Supplemental Registration**").

27. On August 6, 2003, Registrant's trademark application serial no. 76/433454 (from which the Supplemental Registration issued) was finally refused registration on the Principal Register because Registrant's Mark merely describes Registrant's Goods and Services, specifically, "applicant's entire mark FIRST LINE THERAPY is descriptive."

28. On October 28, 2003, in response to the August 6, 2003 final refusal for descriptiveness, Registrant amended trademark application serial no. 76/433454 to seek registration on the Supplemental Register, thereby resulting in the Supplemental Registration.

29. Registrant's Mark, "FIRST LINE THERAPY," is merely descriptive as applied to Registrant's Goods and Services. 15 U.S.C. § 1052(e)(1).

30. Registrant's Mark has not acquired secondary meaning for Registrant's Goods and Services and therefore is not entitled to be registered on the Principal Register.

31. If Registrant is permitted to retain U.S. Registration No. 3,467,675, and thereby

the *prima facie* exclusive right to use in commerce Registrant's Mark in connection with services identical or related to Petitioner's Goods and Services, confusion in trade is likely to result from any concurrent use of Petitioner's Mark and Registrant's Mark to the detriment of Petitioner, who has expended considerable sums and effort in promoting his mark "TIME LINE THERAPY". Any objection, or fault found with the Registrant's Goods and Services marketed under Registrant's Mark would reflect on, and injure, the reputation Petitioner has established for goods and services sold in connection with its mark "FIRST LINE THERAPY."

32. The continued use and registration of Registrant's Mark would result in confusion, mistake, and/or deception as to the source or origin of the Registrant's Goods and Services, leading consumers to believe that they are somehow affiliated with, approved, sponsored, or licensed by Petitioner, or otherwise emanate from Petitioner, resulting in the loss of sales to Petitioner. 15 U.S.C. § 1052(d).

33. The continued use and registration of Registrant's Mark, concurrently with "TIME LINE THERAPY," will become a source of irreparable damage and injury to Petitioner's reputation and goodwill through the generation of confusion, mistake, and/or deception, the dilution of Petitioner's registered marks, and the diminution of Petitioner's ability to control the quality of the goods and services provided thereunder because consumers are likely to attribute the source of Registrant's Goods and Services to Petitioner.

34. The continued use and registration of Registrant's Mark is likely to dilute, and/or will dilute, the distinctiveness of Petitioner's Mark "TIME LINE THERAPY." 15 U.S.C. § 1125(c).

35. If Registrant is permitted to rely on and/or retain the Registration, a cloud will be placed on Petitioner's title in and to his mark "TIME LINE THERAPY," and on his right to

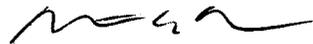
enjoy the free and exclusive use thereof in connection with the sale of his goods and services, all to the damage and harm of Petitioner.

36. There is no issue as to priority of use. As evidenced by the registrations identified above, Petitioner has been using his mark "TIME LINE THERAPY" since as early as September 1987, and he filed his applications for his incontestable registrations in 1992. Registrant indicates a date of first use of September 2002 for Registrant's Goods and Services.

The fee required by 37 C.F.R. § 2.6(a)(16) is enclosed herewith.

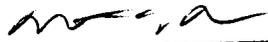
WHEREFORE, Petitioner respectfully requests the cancellation of U.S. Registration No. 3,467,675 for "FIRST LINE THERAPY" issued on July 15, 2008, pursuant to 15 U.S.C. § 1064.

DATED: Honolulu, Hawaii this 10 day of March, 2011.



Martin E. Hsia, Reg. No. 32,471
CADES SCHUTTE LLP
A Limited Liability Law Partnership
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Tel: (808) 521-9200
Attorney for Petitioner
EVERETT W. JAMES

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Martin E. Hsia

32471

Date: 3/10/11

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Mark: "FIRST LINE THERAPY"
Date of Issue: July 15, 2008

EVERETT W. JAMES aka TAD JAMES,)
)
) Petitioner,)
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) v.)
)
) METAGENICS, INC.,)
)
) Registrant.)
 _____)

PROOF OF SERVICE

PROOF OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the attached PETITION FOR CANCELLATION was mailed by prepaid U.S. First Class Mail on the date noted below, to: Dennis H. Cavanaugh, D H Cavanaugh Associates, 555 5TH AVE FL 17 NEW YORK, NY 10017-9254.

DATED: Honolulu, Hawaii this 10 day of March, 2011.

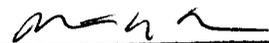


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Attorneys for Petitioner
EVERETT W. JAMES aka TAD JAMES

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32,471

Date:

3/10/11



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RIVERBEND COMMUNICATIONS

Word Mark **RIVERBEND COMMUNICATIONS**

Goods and Services IC 038. US 100 101 104. G & S: Radio broadcasting; telecommunication services, namely, broadcasting services via radio, Internet, and satellite systems. FIRST USE: 20060401. FIRST USE IN COMMERCE: 20060401

IC 041. US 100 101 107. G & S: Education and entertainment services, namely, radio programming services and production of radio programs in the field of news, sports, current events, music; educational services, namely, forums, workshops, seminars and programs in the field of personal finance, real estate, business, health and nutrition, religion, self-improvement and entertainment in the nature of online computer games and contests via radio, Internet, and satellite systems; providing information in the field of news, sports, current events, music, and education and entertainment via radio, Internet, and satellite systems. FIRST USE: 20060401. FIRST USE IN COMMERCE: 20060401

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 78796345

Filing Date January 20, 2006

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition October 30, 2007

Registration Number 3596638

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Martin E. Hsia

32,471

Date: 3/10/11

EXHIBIT A

Registration Date March 24, 2009
Owner (REGISTRANT) Riverbend Communications, LLC CORPORATION IDAHO 2880 North 55 West Idaho Falls IDAHO 83405
Attorney of Record Tyrie Barrott
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COMMUNICATIONS" APART FROM THE MARK AS SHOWN
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Number

Registration Date

October 12, 2010

Owner

(REGISTRANT) Gill, Mei INDIVIDUAL UNITED STATES 145 S. Sunnyside Ave. Elmhurst ILLINOIS 60126

Attorney of Record

Thomas P. Philbrick

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live/Dead Indicator

LIVE

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Singin' & Signin'

Word Mark SINGIN' & SIGNIN'
Goods and Services IC 009. US 021 023 026 036 038. G & S: Computer software featuring musical sound recordings and musical video recordings; Educational kit comprising DVDs featuring secondary level curriculum on all scientific disciplines, along with teacher guides, sold as a unit; Educational software featuring instruction in mathematics. FIRST USE: 20070424. FIRST USE IN COMMERCE: 20080308

IC 016. US 002 005 022 023 029 037 038 050. G & S: Educational and learning publications, namely, booklets and flash cards on a variety of educational disciplines in pre-school through eighth grade; Educational kits sold as a unit in the field of mathematics consisting primarily of educational books, flash cards and worksheets, and also including an educational DVD; Printed educational materials in the field of mathematics; Printed instructional, educational, and teaching materials in the field of mathematics. FIRST USE: 20070424. FIRST USE IN COMMERCE: 20080308

IC 041. US 100 101 107. G & S: Education information; Education services, namely, providing kindergarten through 12th grade (K-12) classroom instruction; Education services, namely, providing math program in the field of mathematics; Education services, namely, providing math program in the fields of mathematics; Education services, namely, training educators to teach through service learning and civic engagement and providing curricula in connection therewith; Educational services, namely, developing curriculum for educators; Educational services, namely, developing curriculum for teachers; Educational services, namely, providing courses of instruction at the k-12 level and distribution of course material in connection therewith. FIRST USE: 20070424. FIRST USE IN COMMERCE: 20080308

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Trademark Search Facility NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical

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32471

Martin E. Hsia

Date: 3/10/11

Classification Code signs,zodiac signs,prescription marks
Serial Number 85054380
Filing Date June 3, 2010
Current Filing Basis 1A
Original Filing Basis 1A
Supplemental Register Date September 15, 2010
Registration Number 3871764
Registration Date November 2, 2010
Owner (REGISTRANT) Singin' & Signin' LLC LIMITED LIABILITY COMPANY OKLAHOMA 1820 S. Cincinnati Ave. Tulsa OKLAHOMA 74119
Type of Mark TRADEMARK. SERVICE MARK
Register SUPPLEMENTAL
Live/Dead Indicator LIVE

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CREATING IRRESISTIBLE CONNECTIONS

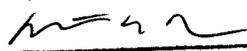
Word Mark CREATING IRRESISTIBLE CONNECTIONS
Goods and Services IC 009. US 021 023 026 036 038. G & S: Downloadable educational audio files, text files and video materials in the field of personal relationships and dating and romance. FIRST USE: 20100101. FIRST USE IN COMMERCE: 20100615

IC 016. US 002 005 022 023 029 037 038 050. G & S: Books, brochures, printed educational material providing information in the field of personal relationships and dating and romance. FIRST USE: 20100101. FIRST USE IN COMMERCE: 20100615

IC 045. US 100 101. G & S: Providing a website featuring information and content in the field of personal relationships and dating and romance. FIRST USE: 20100101. FIRST USE IN COMMERCE: 20100615

Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 85033377
Filing Date May 7, 2010
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition October 26, 2010
Registration Number 3903506

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Martin E. Hsia 32,471

Date: 3/10/11

EXHIBIT D

Registration Date January 11, 2011
Owner (REGISTRANT) Coaching Your Attraction in Action, LLC LIMITED LIABILITY COMPANY ARIZONA P.O. Box 7947 Cave Creek ARIZONA 85327
Attorney of Record Carl J. Spagnuolo
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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first

112 ENTRIES FOUND:

- 1) first (adjective)
- 2) first (adverb)
- 3) first (noun)

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first *adj* \ˈfɜrst\

Definition of FIRST

: preceding all others in time, order, or importance: as

a : EARLIEST

b : being the lowest forward gear or speed of a motor vehicle

c : having the highest or most prominent part among a group of similar voices or instruments <first tenor> <first violins>

See first defined for English-language learners »

Examples of FIRST

We sat in the *first* row.

She succeeded on her *first* attempt.

I still remember the *first* time I saw her.

Origin of FIRST

Middle English, from Old English *fyrst*; akin to Old High German *furist* first, Old English *faran* to go — more at FARE

First Known Use: before 12th century

Related to FIRST

Synonyms: earliest, foremost, headmost, inaugural, initial, leadoff, maiden, original, pioneer, premier, virgin

Antonyms: final, last, latest, latter, terminal, terminating, ultimate

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Martin E. Hsia

32,471

Date: 3/10/11

EXHIBIT E

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Rhymes with FIRST

burst, cursed, erst, Hearst, thirst, verst, worst

Browse

Next Word in the Dictionary: first aid

Previous Word in the Dictionary: firm

All Words Near: first

Ad Choices

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