

ESTTA Tracking number: **ESTTA411693**

Filing date: **05/27/2011**

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	Winston Fraser		
Entity	Individual	Citizenship	CANADA
Address	P.O. Box 581, Sta. B Montreal, QC H3B3K3 CANADA		

Attorney information	James Menker Holley & Menker, PA 60 Ocean Blvd, Ste 3 Atlantic Beach, FL 32233 UNITED STATES eastdocket@holleymenker.com Phone:9042472620		
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Registration Subject to Cancellation

Registration No	3927063	Registration date	03/01/2011
Registrant	Crenshaw Whitley & Associates, L.L.C. 343 River Chase Blvd. Georgetown, TX 78628 UNITED STATES		

Goods/Services Subject to Cancellation

Class 036. First Use: 2010/12/15 First Use In Commerce: 2010/12/15 All goods and services in the class are cancelled, namely: Insurance agency and brokerage services for ancillary benefit programs, namely, dental, vision, disability, life, and long-term care coverage, offered to employees of institutional hospital and health systems

Grounds for Cancellation

Genericness	Trademark Act section 23
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85203336	Application Date	12/21/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MED BENEFITS		

Design Mark	<h1>Med Benefits</h1>
Description of Mark	NONE
Goods/Services	Class 044. First use: First Use: 2004/03/17 First Use In Commerce: 2004/03/17 Providing a website featuring information and links in the fields of health, medicine and insurance

Attachments	85203336#TMSN.jpeg (1 page)(bytes) 2011-5-27 Petition to Cancel 3927063 - MEDBENEFIT.pdf (4 pages)(89924 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	/jmenker/
Name	James Menker
Date	05/27/2011

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

Winston Fraser,)	
)	
Petitioner,)	
)	Cancellation No. _____
v.)	
)	Reg. No. 3927063
Crenshaw Whitley & Associates, L.L.C.,)	
)	
Registrant.)	
)	

PETITION TO CANCEL

Winston Fraser dba WFCI (hereinafter “Petitioner”) is or will be damaged by the continued registration of the mark MEDBENEFIT, which is set forth in Reg. No. 3927063 and owned by Crenshaw Whitley & Associates, L.L.C. (hereinafter “Registrant”), and hereby requests the cancellation of the same.

As grounds for cancellation, Petitioner, by its attorneys, avers as follows:

1. On January 16, 2009, Registrant filed application Ser. No. 77651103 for the mark MEDBENEFIT for “Insurance agency and brokerage services for ancillary benefit programs, namely, dental, vision, disability, life, and long-term care coverage, offered to employees of institutional hospital and health systems” to the United States Patent and Trademark Office.
2. On December 15, 2010, Registrant filed an allegation of use in connection with application Ser. No. 77651103 to the United States Patent and Trademark Office. In the allegation of use, Registrant stated that the applied-for mark was first used anywhere on October

15, 2010 and that it was first used in commerce on October 15, 2010.

3. On December 29, 2011, Registrant amended its application to seek registration on the Supplemental Register in response to a refusal under Section 2(e)(1) of the Trademark Act.

4. On March 1, 2011, a registration, Reg. No. 3927063, was issued to Registrant.

5. On December 21, 2011, Petitioner filed application Ser. No. 85203336 for the mark Med Benefits for “providing a website featuring information and links in the fields of health, medicine and insurance” to the United States Patent and Trademark Office.

6. The mark set forth in application Reg. No. 3927063 and the mark set forth in application Ser. No. 85203336 are highly similar in sound, appearance and meaning.

7. The services set forth in application Reg. No. 3927063 and the services set forth in application Ser. No. 85203336 are highly similar.

8. The mark set forth in application Ser. No. 85203336 is currently in use in commerce.

9. The mark set forth in application Ser. No. 85203336 was first used in commerce prior to any actual use or constructive use of the mark set forth in application Reg. No. 3927063.

10. Petitioner is or will be damaged by the existence of this registration. Specifically, an Examining Attorney is of the opinion that the mark set forth in application Ser. No. 85203336 consists of or comprises a mark which so resembles the mark set forth in Reg. No. 3927063 as to be likely to cause confusion, or to cause mistake, or to deceive, under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

11. Registrant has admitted that its MEDBENEFIT mark is not inherently distinctive.

12. MEDBENEFIT does not function as a mark with respect to Registrant's services and does not fit within the statutory definition of a trademark in §§23 and 45, 15 U.S.C. §§1091 and 1127.

WHEREFORE, Petitioner respectfully requests that Reg. No. 3927063 be cancelled. The required filing fee is submitted herewith.

Respectfully submitted,

WINSTON FRASER

By: /jmenker/
James R. Menker

Petitioner's Attorneys
Holley & Menker, P.A.
P.O. Box 331537
Atlantic Beach, FL 32233
(904) 247-2620

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing “PETITION TO CANCEL” was served on Registrant’s attorney, Scott T. Griggs of Griggs Bergen LLP with an address at 17950 Preston Road, Suite 1000, Dallas, TX 75252, via first class mail, postage prepaid, today **May 27, 2011**.

By: /jmenker/
James R. Menker