

ESTTA Tracking number: **ESTTA427088**

Filing date: **08/25/2011**

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	Threshold Enterprises, Ltd.		
Entity	Corporation	Citizenship	Delaware
Address	23 Janis Way Scotts Valley, CA 95066 UNITED STATES		

Attorney information	Monty Agarwal Arnold & Porter LLP One Embarcadero Center 22nd Floor San Francisco, CA 94111 UNITED STATES trademarkdocketing@aporter.com, monty.agarwal@aporter.com, rachel.chanin@aporter.com, jessica.lewis@aporter.com Phone:(415) 356-3000
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### Registration Subject to Cancellation

Registration No	3996069	Registration date	07/19/2011
Registrant	Dr. Catherine Wilbert 1220 Lafitte Street Mandeville, LA 70448 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 005. First Use: 2010/01/01 First Use In Commerce: 2010/01/01  
All goods and services in the class are cancelled, namely: Dietary and nutritional supplements

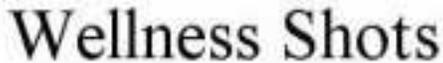
### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1965003	Application Date	05/12/1994
Registration Date	04/02/1996	Foreign Priority Date	NONE
Word Mark	WELLNESS FORMULA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1984/07/01 First Use In Commerce: 1984/07/01		

	vitamins, dietary herbal supplements and nutritional supplements		
U.S. Registration No.	3933241	Application Date	03/06/2009
Registration Date	03/22/2011	Foreign Priority Date	NONE
Word Mark	WELLNESS FIZZ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2007/02/19 First Use In Commerce: 2007/02/19 dietary supplements, nutritional supplements, food supplements and herbal supplements		

U.S. Registration No.	3073471	Application Date	04/05/2005
Registration Date	03/28/2006	Foreign Priority Date	NONE
Word Mark	WELLNESS SHOTS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2005/02/28 First Use In Commerce: 2005/02/28 Dietary Supplement		

Attachments	77685678#TMSN.jpeg ( 1 page )( bytes ) 78601833#TMSN.jpeg ( 1 page )( bytes ) Wellness Innovations Petition to Cancel.pdf.PDF ( 7 pages )(66940 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 Overnight Courier on this date.

Signature	/Monty Agarwal/
Name	Monty Agarwal
Date	08/25/2011

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

THRESHOLD ENTERPRISES LTD.	)	
	)	
Petitioner,	)	Cancellation No. _____
	)	
v.	)	Mark: WELLNESS INNOVATIONS
	)	Registration No. 3,996,069
DR. CATHERINE WILBERT,	)	Registration Date: July 19, 2011
	)	
Respondent.	)	
	)	

**PETITION TO CANCEL**

Threshold Enterprises Ltd. (“Petitioner” or “Threshold Enterprises”), a corporation of Delaware with its principal place of business at 23 Janis Way, Scotts Valley, California 95066, believes that it is being damaged and will continue to be damaged by Dr. Catherine Wilbert’s (“Respondent”) registration of WELLNESS INNOVATIONS, Registration No. 3,996,069 (“Respondent’s Registration”), and hereby petitions to cancel the same pursuant to Section 14 of the Lanham Act (15 U.S.C. § 1064) and Section 2.111 of the Rules of Practice in Trademark Cases (37 C.F.R. § 2.111).

As grounds for cancellation, Petitioner alleges:

1. On information and belief, Respondent is a United States citizen with a principal place of residence at 1220 Lafitte Street, Mandeville, Louisiana 70448.
2. Respondent is the listed owner of United States Trademark Registration No. 3,996,069 for WELLNESS INNOVATIONS for “dietary and nutritional supplements” in International Class 5, with a filing date of April 21, 2010, an issuance date of July 19, 2011, and an alleged first use date of January 1, 2010 (“the ‘069 Registration”).

3. Petitioner is the owner of incontestable U.S. Trademark Registration No. 1,965,003 for WELLNESS FORMULA for “vitamins, dietary herbal supplements and nutritional supplements” in International Class 005, with a first use date of July 1, 1984. WELLNESS FORMULA was originally registered by Source Naturals, Inc., a wholly owned subsidiary of Threshold Enterprises, and was later assigned to Threshold Enterprises. This registration is valid, subsisting, uncanceled and conclusive evidence of Threshold Enterprises’ exclusive right to use WELLNESS FORMULA in commerce or in connection with the goods specified in the registration. Moreover, Registration No. 1,965,003 disclaims the exclusive right to use FORMULA apart from the mark WELLNESS.

4. Petitioner is the owner of U.S. Trademark Registration No. 3,933,241 for WELLNESS FIZZ for “dietary supplements, nutritional supplements, food supplements and herbal supplements” in Class 005. This registration is valid, subsisting, uncanceled and conclusive evidence of Threshold Enterprises’ exclusive right to use WELLNESS FIZZ in commerce or in connection with the goods specified in the registration.

5. Petitioner is the owner of U.S. Trademark Registration No. 3,073,471 for WELLNESS SHOTS for “dietary supplements” in Class 005. This registration is valid, subsisting, uncanceled and conclusive evidence of Threshold Enterprises’ exclusive right to use WELLNESS SHOTS in commerce or in connection with the goods specified in the registration.

6. Since at least twenty-five years prior to Respondent’s alleged first use date for the ‘069 Registration, Petitioner adopted and has continuously used its WELLNESS FORMULA mark in connection with vitamins, dietary supplements and nutritional supplements. WELLNESS FORMULA is a prominent national brand, with products available nationwide in all major markets.

7. Furthermore, Petitioner has adopted and used numerous other marks containing WELLNESS in connection with health and nutritional products since at least as early as 1997. Current products in its Wellness Family of Products include a variety of nutritional supplements and health products in liquids, tablets, capsules, powders, effervescent products, sprays, oils and other forms. These include:

WELLNESS BREATHE FREE

WELLNESS C-1000

WELLNESS COLD & FLU

WELLNESS COLLOIDAL SILVER

WELLNESS COLLOIDAL SILVER NASAL SPRAY

WELLNESS COLLOIDAL SILVER THROAT SPRAY

WELLNESS COUGH SYRUP

WELLNESS COUGH SYRUP FOR KIDS

WELLNESS EARACHE

WELLNESS ELDERBERRY EXTRACT

WELLNESS ELDERBERRY LIQUID EXTRACT

WELLNESS FLUGUARD

WELLNESS FORMULA

WELLNESS GARLICELL

WELLNESS HERBAL KIDS LIQUID

WELLNESS HERBAL RESISTANCE LIQUID

WELLNESS HERBAL THROAT SPRAY

WELLNESS IMMUNOW

WELLNESS IMMUNE CHEWABLE

WELLNESS LARCH EXTRACT

WELLNESS MULTIPLE

WELLNESS OIL OF OREGANO

WELLNESS OLIVE LEAF

WELLNESS SHOTS

WELLNESS TRANSFER FACTOR

WELLNESS ZINC LOZENGES

WELLNESS ZINC THROAT SPRAY

8. Petitioner has invested substantial amounts of time, effort and money in developing, marketing, promoting and protecting its WELLNESS FORMULA trademark and its other WELLNESS marks throughout the United States in the field of herbal and nutritional supplements. As such, in addition to the protection afforded Threshold Enterprises by its federal trademark registration of WELLNESS FORMULA and/or other WELLNESS marks, Petitioner has extensive, non-registered statutory and common law rights in and to WELLNESS FORMULA and its other WELLNESS marks.

9. Respondent has no license, consent or permission from Threshold Enterprises to use or register WELLNESS INNOVATIONS.

### **COUNT I**

#### **(Priority of Use and Likelihood of Confusion, 15 U.S.C. §1052(d))**

10. Petitioner incorporates by reference paragraphs 1 through 9 as if fully stated herein.

11. Since prior to the filing date of the '069 Registration, Petitioner has been using

the WELLNESS marks in connection with Petitioner's goods.

12. Since prior to the claimed priority date of the '069 Registration, Petitioner has been using the WELLNESS marks in connection with Petitioner's goods.

13. Respondent's mark so resembles Petitioner's WELLNESS FORMULA mark and other WELLNESS marks that it is likely to cause confusion, or to cause mistake or deceive within the meaning of Section 2(d) of the Trademark (Lanham) Act of 1946, 15 U.S.C. §1052(d); and more particularly, Respondent's mark and use thereof are likely to cause confusion in, or to cause mistake by, or to deceive the trade and purchasing public into believing that the goods/services in the '069 Registration originate with or are affiliated with Threshold Enterprises, or otherwise are authorized, licensed or sponsored by Threshold Enterprises.

14. The continuous registration of the '069 Registration is causing injury to Petitioner's business plans, is impairing Threshold's rights in its WELLNESS marks, is inconsistent with Threshold's rights, and will continue to cause injury to Threshold until the '069 Registration is cancelled.

## **COUNT II**

### **(Dilution, 15 U.S.C. § 1125(c))**

15. Petitioner incorporates by reference paragraphs 1 through 14 as if fully stated herein.

16. Petitioner is the owner of the famous WELLNESS FORMULA and other WELLNESS marks.

17. Respondent's purported use of the '069 Registration began after Petitioner's WELLNESS FORMULA mark became famous.

18. Petitioner's continued use of the WELLNESS INNOVATIONS mark is likely to

cause dilution by creating a likelihood of association with Petitioner's famous marks arising from its similarity to Petitioner's famous marks that is likely to impair the distinctiveness of the Petitioner's WELLNESS FORMULA mark by blurring the considerable source-identifying power of Petitioner's WELLNESS FORMULA and other WELLNESS marks.

WHEREFORE, Petitioner, believing that it will be damaged by the continued registration of the '069 Registration, hereby requests that this Petition to Cancel be sustained; that the registration for the '069 Registration be cancelled; and that Petitioner be granted such other and further relief as may be just.

This Petition to Cancel is submitted electronically and the undersigned hereby authorizes the payment of all official filing fees or any other fees due from Deposit Account No. 50-2387.

August 25, 2011

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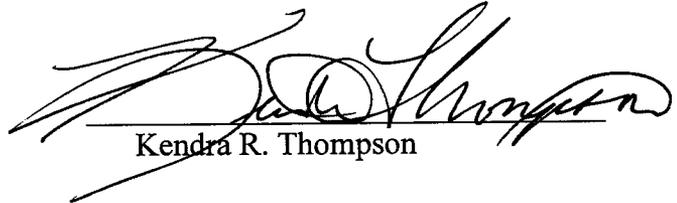
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*Attorneys for Petitioner*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Petition to Cancel has been served on Dr. Catherine Wilbert by mailing said copy on August 25, 2011, via Overnight Mail, postage prepaid to the following:

Catherine Wilbert  
1220 Lafitte Street  
Mandeville, LA 70448



Kendra R. Thompson