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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	Ohio Structural Holdings, LLC		
Entity	Limited Liability Company	Citizenship	Florida
Address	P.O. Box 1413 Solana Beach, CA 92075 UNITED STATES		

Attorney information	Joseph A. Mandour Mandour & Associates, APC 16870 West Bernardo Drive, Suite 400 San Diego, CA 92127 UNITED STATES jmandour@mandourlaw.com, kbruce@mandourlaw.com, blila@mandourlaw.com Phone:858-487-9300		
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Registration Subject to Cancellation

Registration No	3797180	Registration date	06/01/2010
Registrant	AQUAPRO PAINTING & WATERPROOFING, INC. 8001 VINE CREST AVENUE LOUISVILLE, KY 40222 UNITED STATES		

Goods/Services Subject to Cancellation

Class 037. First Use: 2009/09/01 First Use In Commerce: 2009/09/01 All goods and services in the class are cancelled, namely: painting in the field of commercial buildings; consultation relating to painting of buildings; waterproofing of commercial buildings

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Lack of bona fide intent

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85549416	Application Date	02/22/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	AQUAPRO RESIDENTIAL ENHANCEMENT SERVICES		

Design Mark	
Description of Mark	<p>The mark consists of the word AQUAPRO shown in capital, outlined letters with an illustration representing a stream of water running horizontally through the upper portion of the letters "AQUA" and a puddle positioned between the second "A" and the "P". Beneath the word AQUAPRO and aligned to the right are the words RESIDENTIAL ENHANCEMENT SERVICES.</p>
Goods/Services	<p>Class 037. First use: First Use: 2001/12/31 First Use In Commerce: 2006/12/31 Air duct cleaning services; Carpet cleaning; Cleaning of building exterior surfaces; Cleaning of tile and grout; Home energy assessment services for the purpose of determining home improvements needed to improve energy use and efficiency; House painting; Installation of building insulation; Power washing services; Pressure washing services; Roofing repair</p> <p>Class 042. First use: First Use: 2001/12/31 First Use In Commerce: 2006/12/31 Home inspection services for purposes of home repair and restoration</p>
Attachments	<p>85549416#TMSN.jpeg (1 page)(bytes) Petition to Cancel AQUAPRO PAINTING & WATERPROOFING 11-05-12.pdf (4 pages)(17319 bytes)</p>

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	/jm/
Name	Joseph A. Mandour
Date	11/05/2012

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

In the matter of Registration No. 3,797,180 for the mark AQUAPRO PAINTING & WATERPROOFING, registered on June 1, 2010.

Ohio Structural Holdings, LLC,)	
)	
Petitioner,)	Cancellation No. _____
)	
v.)	
)	
Aquapro Painting & Waterproofing, Inc.,)	
)	
Registrant.)	
_____)	

PETITION TO CANCEL

Petitioner, Ohio Structural Holdings, LLC, a limited liability company of Florida, having a business address of P.O. Box 1413, Solana Beach, CA 92075, believes that it is being damaged by Registration No. 3,797,180 and hereby petitions to cancel the same. As grounds therefor, it is alleged that:

1. Petitioner filed an application for registration of its trademark AQUAPRO RESIDENTIAL ENHANCEMENT SERVICES (+Design) on February 22, 2012 (Serial No. 85/549,416).
2. Petitioner has been refused registration of its mark because the Examining Attorney contends that Petitioner's mark so resembles the mark in Registrant's Registration No. 3,797,180 for the mark AQUAPRO PAINTING & WATERPROOFING as to be likely, when used on or in connection with the services of Registrant, to cause confusion, or to cause mistake, or to deceive.

3. As stated in its application, Petitioner has continuously used the trademark AQUAPRO RESIDENTIAL ENHANCEMENT SERVICES (+Design) in interstate commerce in relation to “*Air duct cleaning services; Carpet cleaning; Cleaning of building exterior surfaces; Cleaning of tile and grout; Home energy assessment services for the purpose of determining home improvements needed to improve energy use and efficiency; House painting; Installation of building insulation; Power washing services; Pressure washing services; Roofing repair*” and “*Home inspection services for purposes of home repair and restoration*” since at least as early as December 31, 2006. Since long before Registrant’s alleged date of first use of September 1, 2009, the AQUAPRO RESIDENTIAL ENHANCEMENT SERVICES trademark has become distinctive of and identified exclusively with Petitioner and its services offered under that mark.

4. Registrant’s trademark AQUAPRO PAINTING & WATERPROOFING, Registration No. 3,797,180, was registered on June 1, 2010 for “*painting in the field of commercial buildings; consultation relating to painting of buildings; waterproofing of commercial buildings*” in Class 37.

5. Pursuant to Section 2(d) of the Act, 15 U.S.C. § 1052(d), Registrant’s mark so resembles Petitioner’s mark, as to be likely, when used on or in connection with the services of Registrant, to cause confusion, or to cause mistake, or to deceive. Therefore a likelihood of confusion exists and Registrant’s registration should be cancelled because Petitioner has priority of use.

6. On information and belief, Registrant did not have a *bona fide* intent to use the AQUAPRO PAINTING & WATERPROOFING trademark when the trademark application at issue was filed. Applicant had no intention of producing all the goods and services

claimed on the AQUAPRO PAINTING & WATERPROOFING application. Registrant lacked the ability and willingness to use the trademark in the United States to identify all the goods listed in the application at the time of the application was filed.

7. Furthermore, Petitioner believes that Registrant's maintenance of Registration No. 3,797,180 will result in financial and other injury and damage to Petitioner in its business by preventing Petitioner from obtaining a registration for its mark due to a likelihood of confusion between the marks. Moreover, Petitioner's continued and legal use of its mark will be impaired by the continued registration of said mark of Registrant.

8. To the best of Petitioner's knowledge, the name and address of the current Registrant of Registration No. 3,797,180 is as follows:

AQUAPRO PAINTING & WATERPROOFING, INC.
8001 VINE CREST AVENUE
LOUISVILLE, KENTUCKY 40222

WHEREFORE, Petitioner requests that Registration No. 3,797,180 be cancelled and for such other and further relief as may be deemed proper.

Date: November 5, 2012

By: _____/Joseph A. Mandour/_____
Joseph A. Mandour, Esq.
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San Diego, CA 92127
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Fax: 858-487-9390
E-Mail: jmandour@mandourlaw.com
Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing **PETITION TO CANCEL** was sent by first class mail, postage prepaid to Aquapro Painting & Waterproofing, Inc., 8001 Vine Crest Avenue, Louisville, Kentucky 40222.

Date: November 5, 2012

/Kim Bruce/
Kim Bruce