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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	Caroll A Delo		
Entity	Individual	Citizenship	UNITED STATES
Address	2513 West Azeele Street Tampa, FL 33609 UNITED STATES		

Attorney information	Brad F. Barrios Bajo Cuva Cohen & Turkel, P.A. 100 N. Tampa Street Suite 1900 Tampa, FL 33602 UNITED STATES brad.barrios@bajocuva.com Phone:813-443-2199
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Registrations Subject to Cancellation

Registration No	3563065	Registration date	01/20/2009
Registrant	GREBLER, SCOTT E 3114 HARBOR VIEW AVENUE TAMPA, FL 33611 UNITED STATES		

Goods/Services Subject to Cancellation

Class 044. First Use: 2005/08/01 First Use In Commerce: 2005/08/01
All goods and services in the class are cancelled, namely: Medical services, namely, laser hair removal, laser skin rejuvenation, laser vein removal, and cellulite reduction treatment

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)		
Abandonment	Trademark Act section 14		
Registration No	3598550	Registration date	03/31/2009
Registrant	GREBLER, SCOTT E 3114 HARBOR VIEW AVENUE TAMPA, FL 33611 UNITED STATES		

Goods/Services Subject to Cancellation

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Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Petition for Cancellation.pdf(189518 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	/Brad F. Barrios/
Name	Brad F. Barrios
Date	07/03/2014

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

Carroll A. Delo,)	
)	
Petitioner,)	
v.)	Opposition No:
)	Serial Nos: 3563065
Scott E. Grebler,)	3598550
)	
Respondent.)	

Honorable Commissioner for Trademarks
600 Dulany Street
Alexandria, VA 22314

PETITION FOR CANCELLATION OF TRADEMARKS

1. This is a petition for cancellation of two registered trademarks pursuant to 15 U.S.C. § 1064: Registration Number 3,563,065 and Registration Number 3,598,550. The registered owner has abandoned both marks by failing to use them. Further, as described below, the registered owner committed fraud on the United States Patent and Trademark Office (“USPTO”) by submitting a false Declaration of Use relating to one of the marks.

2. Petitioner, Carroll A. Delo (“Delo”), is a resident of Hillsborough County, Florida.

3. Respondent, Scott E. Grebler (“Grebler”), is the registered owner of the two marks at issue and Delo’s former business partner. Grebler is also a resident of Hillsborough County, Florida.

4. On September 28, 2004, Grebler incorporated SEG Holdings, Inc.

5. On March 30, 2005, SEG Holdings Inc. filed its Articles of Amendment to Articles of Incorporation. The Amendment changed the name of the company to Simply Smooth Laser Center Hair Removal Center, Inc. and identified Delo and Grebler as 50% owners.

6. On July 15, 2005, Simply Smooth Laser Center Hair Removal Center, Inc. filed its Articles of Amendment to Articles of Incorporation, which changed the name of the company to Simply Smooth Laser Center, Inc.

7. On September 12, 2005, Grebler and Delo, as co-owners, registered with the Florida Department of State the mark SIMPLY SMOOTH LASER CENTER INC., with no claim for the exclusive right to use the term “Laser Center Inc.” and the following design:



(the “Florida Mark”). The Florida Mark is due to expire on September 12, 2015.

8. The Florida Mark was registered to be used in connection with the following services: laser hair removal, photofacials, skin rejuvenation, and laser vein removal. The registration provides that the co-owners first used the Florida Mark in Florida on August 1, 2005.

9. On January 20, 2009, the USPTO issued Registration Number 3,563,065 for the



service mark:

(the “Federal Service Mark”).

10. On March 31, 2009, the USPTO issued Registration Number 3,598,550 for the standard character mark SIMPLY SMOOTH (the “Federal Word Mark”).

11. Both the Federal Service Mark and the Federal Word Mark were registered by Simply Smooth Laser Center, Inc. in international class 44 for: medical services, namely, laser hair removal, laser skin rejuvenation, laser vein removal, and cellulite reduction treatment.

12. In or around August 2010, Simply Smooth Laser Center, Inc. ceased all operations. The company was administratively dissolved on September 28, 2012.

13. On October 20, 2010, Grebler filed a Trademark Assignment which purported to assign “the entire interest and the goodwill” in the Federal Service Mark and the Federal Word Mark from Simply Smooth Laser Center, Inc. to Grebler.

14. However, the earlier filed Florida Mark has not been assigned and Delo and Grebler remain registered co-owners of the Florida Mark.

15. Since Simply Smooth Laser Center, Inc. ceased operations, Grebler has not used the Florida Mark, the Federal Service Mark or the Federal Word Mark in commerce and has not been engaged in providing the services of laser hair removal, laser skin rejuvenation, laser vein removal, or cellulite reduction treatment.

16. Since Simply Smooth Laser Center, Inc. ceased operations, Delo has continuously used the Federal Word Mark in commerce in connection with performing the services of laser hair removal, laser skin rejuvenation, laser vein removal, and cellulite reduction treatment.

17. On October 24, 2011, Delo incorporated Esthetic Laser Consultant, Inc. Since its incorporation, Esthetic Laser Consultant, Inc. and Delo have continuously used the Federal Word Mark in commerce in connection with performing the services of laser hair removal, laser skin rejuvenation, laser vein removal, and cellulite reduction treatment.

18. On February 24, 2014, Grebler filed with the USPTO a sworn Combined Declaration of Use and Incontestability under Sections 8 & 15 for the Federal Service Mark (the “Declaration”).

19. In support of the Declaration, Grebler filed a specimen to demonstrate use of the Federal Service Mark in commerce. The specimen includes two screen shots of the website www.simplysmoothlasercenter.com (the “Website”).

20. While the screen shots of the Website demonstrate use of the Federal Word Mark, neither demonstrates use of the Federal Service Mark.

21. Moreover, the screen shots of the Website do not demonstrate use of Federal Word Mark or Federal Service Mark by Grebler, as he is not affiliated with the products or services advertised on the Website and does not own the content displayed on the Website.

22. All conditions precedent to the bringing and maintenance of this petition and the granting of the relief requested have been performed, have occurred or have been waived.

23. Delo engaged the undersigned attorneys and is obligated to pay them a reasonable fee for their services.

COUNT I: CANCELLATION OF FEDERAL SERVICE MARK

24. Delo reallages paragraphs 1 through 23.

25. Grebler abandoned the Federal Service Mark by failing to use it in commerce in connection with performing the services of laser hair removal, laser skin rejuvenation, laser vein removal, and cellulite reduction treatment since August 2010.

26. Alternatively, the Trademark Assignment was invalid because it did not include any company assets, services or business of any kind, other than the Federal Service Mark and its goodwill, and Simply Smooth Laser Center, Inc. abandoned the Federal Service Mark by failing to use it in commerce in connection with performing the services of laser hair removal, laser skin rejuvenation, laser vein removal, and cellulite reduction treatment since August 2010.

27. Grebler fraudulently obtained the incontestability of the Federal Service Mark by submitting specimens that did not demonstrate his use of the Federal Service Mark.

28. Due to his failure to use the Federal Service Mark in commerce in connection with the services of laser hair removal, laser skin rejuvenation, laser vein removal, and cellulite reduction treatment, Grebler has no ownership rights in the Federal Service Mark.

29. Delo has been damaged and believes that she will be further damaged by the continued registration of the Federal Service Mark.

WHEREFORE, Petitioner, Caroll Ann Delo, respectfully requests the United States Patent and Trademark Office to cancel Registration Number 3,563,065 for the Federal Service Mark.

**COUNT II: CANCELLATION
OF FEDERAL WORD MARK**

30. Delo realleges paragraphs 1 through 23.

31. Grebler abandoned the Federal Word Mark by failing to use it in commerce in connection with performing the services of laser hair removal, laser skin rejuvenation, laser vein removal, and cellulite reduction treatment since August 2010.

32. Alternatively, the Trademark Assignment was invalid because it did not include any company assets, services or business of any kind, other than the Federal Word Mark and its goodwill, and Simply Smooth Laser Center, Inc. abandoned the Federal Word Mark by failing to use it in commerce in connection with performing the services of laser hair removal, laser skin rejuvenation, laser vein removal, and cellulite reduction treatment since August 2010.

33. Due to his failure to use the Federal Word Mark in commerce in connection with the services of laser hair removal, laser skin rejuvenation, laser vein removal, and cellulite reduction treatment, Grebler has no ownership rights in the Federal Word Mark.

34. Delo has been damaged and believes that she will be further damaged by the continued registration of the Federal Word Mark.

WHEREFORE, Petitioner, Caroll Ann Delo, respectfully requests the United States Patent and Trademark Office to cancel Registration Number 3,598,550 for the Federal Word Mark.

Respectfully submitted,

/s/ Brad F. Barrios

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Attorneys for Petitioner Caroll Ann Delo

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2014, I served a copy of this Petition by U.S. First Class Certified Mail on Scott E. Grebler, 3114 Harbor View Ave., Tampa, Florida 33611 and by electronic mail at sg@thegreblergroup.com.

/s/ Brad F. Barrios

Attorney