

ESTTA Tracking number: **ESTTA1286541**Filing date: **05/22/2023**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 has filed a petition to cancel the registration indicated below.

Petitioner information

Name	Pinnacle Pharmacy Group, LLC		
Entity	limited liability company	Citizenship	Arkansas
Address	824 SALEM ROAD CONWAY, AR 72034 UNITED STATES		
Correspondence information	MEREDITH LOWRY WRIGHT, LINDSEY & JENNINGS LLP 3333 PINNACLE HILLS PARKWAY SUITE 510 STE. 510 ROGERS, AR 72758 UNITED STATES Primary email: mlowry@wlj.com Secondary email(s): mlowry@wlj.com 4796313282		

Registration subject to cancellation

Registration no.	6489799	Registration date	09/21/2021
Register	Principal		
Registrant	Gizmocup LLC 3060 WILLISTON RD. STE 3 SOUTH BURLINGTON, VT 05403 UNITED STATES		

Goods/services subject to cancellation

Class 005. First Use: Sep 14, 2020 First Use In Commerce: Sep 14, 2020 All goods and services in the class are subject to cancellation, namely: Motion sickness medicines; Medicinal creams for skin care; Medicinal hair growth preparations; Medicinal herbal extracts for medical purposes; Medicinal herbal preparations; Medicinal preparations for the mouth and as sprays; Medicines for alleviating constipation; Medicines for dental purposes; Medicines for intestinal disorders; Medicines for the treatment of gastrointestinal diseases; Antiallergic medicines; Prescription and non-prescription medicines, namely, pills, tablets, capsules, caplets, liquid drops, sachets and pharmaceutical preparations for the treatment of cardiovascular disorders

Grounds for cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
No use of mark in commerce before application, amendment to allege use, or statement of use was due	Trademark Act Sections 14(1) and 1(a), (c), and (d)

Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)
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Mark cited by petitioner as basis for cancellation

U.S. application no.	90899305	Application date	08/24/2021
Register	Principal		
Registration date	NONE	Foreign priority date	NONE
Word mark	HEARTLAND PHARMACY		
Design mark			
Description of mark	NONE		
Goods/services	Class 035. First use: First Use: Feb 17, 2007 First Use In Commerce: Feb 17, 2007 Pharmaceutical services, namely, processing online and telephone prescription orders in retail and central fill pharmacies; Retail pharmacy services		

Attachments	CancellationPetition.pdf(71135 bytes) Cancellation Exhibit A.pdf(2400854 bytes) Cancellation Exhibit B.pdf(559933 bytes)
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Signature	/Meredith Lowry/
Name	Meredith Lowry
Date	05/22/2023

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PINNACLE PHARMACY GROUP, LLC,)	
)	
Petitioner,)	Cancellation No. _____
)	
v.)	Reg. No. 6489799
)	
GIZMOCUP LLC)	Mark: HEARTLAND PHARMA CO.
)	
Registrant.)	Registered: September 21, 2021
)	

PETITION FOR CANCELLATION

Petitioner, Pinnacle Pharmacy Group, LLC (hereinafter “Petitioner”), an Arkansas limited liability company with its principal place of business at 824 Salem Road, Conway, Arkansas 72034, believes that it is being damaged and will continue to be damaged by the registration of the mark shown in Reg. No. 6489799, and therefore petitions for cancellation of the same under Section 14 of the Trademark Act of 1946, 15 U.S.C. § 1064.

INTRODUCTION

1. Petitioner is a retail pharmacy providing pharmaceutical services and has operated a pharmacy using the trademark HEARTLAND PHARMACY in interstate commerce since 2007.

2. Gizmocup LLC (“Registrant”) is the owner of U.S. Trademark Reg. No. 6489799 (the “Registration”) for HEARTLAND PHARMA CO. design (the “Registered Mark”) for various over-the-counter medicines, namely the following: motion sickness medicines; medicinal creams for skin care; medicinal hair growth preparations; medicinal herbal extracts for medical purposes; medicinal herbal preparations;

medicinal preparations for the mouth and as sprays; medicines for alleviating constipation; medicines for dental purposes; medicines for intestinal disorders; medicines for the treatment of gastrointestinal diseases; antiallergic medicines; prescription and non-prescription medicines, namely, pills, tablets, capsules, caplets, liquid drops, sachets and pharmaceutical preparations for the treatment of cardiovascular disorders.

FACTS

3. Since 2007, Petitioner has been using its trademark HEARTLAND PHARMACY in association with retail pharmacy services and pharmaceutical services through, among other channels of trade, its storefront and its website at www.heartland-rx.com. An example of Petitioner's use is provided as Exhibit A.

4. Petitioner is the applicant for U.S. Trademark Serial No. 90899305 for HEARTLAND PHARMACY, which is pending.

5. Registrant applied for the Registered Mark on September 17, 2020, over ten years after Petitioner began use of the trademark HEARTLAND PHARMACY for retail pharmacy services and pharmaceutical services. This application was registered on September 21, 2021 as the Registration.

6. Petitioner, as the party with priority to use the trademark HEARTLAND PHARMACY or anything likely to cause confusion therewith, has standing to file this Petition for Cancellation as Petitioner is being injured and will continue to be injured by Registrant's Registration.

COUNT I – LIKELIHOOD OF CONFUSION

7. Petitioner incorporates by reference paragraphs 1 – 5 as if fully stated herein.

8. Since at least as early as 2007, Petitioner has been using the trademark HEARTLAND PHARMACY in association with retail pharmacy services and pharmaceutical services.

9. As a result of the widespread use in interstate commerce by Petitioner of the trademark HEARTLAND PHARMACY, Petitioner has acquired extensive goodwill, has developed a high degree of distinctiveness and is well-known and recognized as providing high quality service to its customers.

10. Petitioner's use of the trademark HEARTLAND PHARMACY predates any valid use by Registrant of its Registered Mark.

11. Registrant's Registered Mark is confusingly similar to Petitioner's trademark HEARTLAND PHARMACY, thus creating a likelihood of confusion among consumers.

12. Registrant's over-the-counter medical goods in Class 5 are similar to Petitioner's retail pharmacy services and pharmaceutical services such that they would travel and/or be promoted through the same channels of trade for sale to, and use by, the same class of consumers.

13. Registrant's use of Registrant's Mark in connection with its listing of services is likely to cause confusion, mistake, or deception as to the source or origin of Registrant's services in the public.

14. If Registrant is permitted to maintain Registrant's Registration confusion is likely to result, which will result in damage to Petitioner's business. Such belief of damages by Petitioner is reasonable under the circumstances.

15. Therefore, under Section 2(d), Registrant's use of the Registered Mark is likely to cause confusion with Petitioner's use of the trademark HEARTLAND PHARMACY and because Petitioner has prior use of the trademark HEARTLAND PHARMACY, the Registrant's Registration should be cancelled.

COUNT II - NONUSE

16. Petitioner incorporates by reference paragraphs 1 – 14 as if fully stated herein.

17. Upon information and belief, Registrant submitted four digital images of products with its application to establish use of the mark. Registrant's specimens are provided in Exhibit B. Petitioner asserts that Registrant's specimens are false.

18. Upon information and belief, Registrant has not used the mark HEARTLAND PHARMA CO. in commerce for medical products.

19. Upon information and belief, Registrant has not taken any steps to commence use of the mark HEARTLAND PHARMA CO. in commerce.

20. Upon information and belief, Registrant does not have any documents that establish use of the mark HEARTLAND PHARMA CO. in commerce.

21. Petitioner asserts that Registrant's application to register was false and void ab initio for failure to use the mark at the time the use-based application was filed as required by 15 U.S.C. § 1051(a).

22. In view of Registrant's non-use of the Registrant's mark shown in U.S. Reg. No. 6489799, Registrant is not entitled to continued registration of the mark pursuant to Section 14(3) of the Trademark Act, 15 U.S.C. § 1064(3), and, as such, Registrant's Registration should be cancelled.

COUNT III - FRAUD

23. Petitioner hereby incorporates by reference the allegations of Paragraph 1 through 21 as if fully set forth herein.

24. Registrant submitted the Registration identifying a list of over-the-counter medical products used in commerce. Upon information and belief, Registrant has not used the mark HEARTLAND PHARMA CO. in commerce upon all of the over-the-counter medical products identified in the Registration as required by 15 U.S.C. § 1051(a).

25. In Registrant's Registration for HEARTLAND PHARMA CO. filed September 17, 2020, Registrant declared under oath, being warned that willful false statements, and the like, may jeopardize the validity of the declaration, that "The mark is in use in commerce with the goods in the application."

26. In Registrant's Registration for HEARTLAND PHARMA CO. filed September 17, 2020, Registrant declared under oath, being warned that willful false statements, and the like, may jeopardize the validity of the declaration, that "The specimen shows the mark as used on or in connection with the goods in the application".

27. Registrant further stated in the Registration that the mark was first used in commerce on September 14, 2020.

28. Registrant knowingly, with an intent to deceive the U.S. Patent and Trademark Office, included within its use-based trademark application goods on which the mark was not in use.

29. Such knowingly false or fraudulent statements were relied upon by authorized agents of the U.S. Patent and Trademark Office to register the Registration for the mark HEARTLAND PHARMA CO.

30. Registrant is therefore not entitled to the Registration because Registrant committed fraud in filing its trademark application based on use in commerce.

31. Petitioner reserves the right to amend this Petition to allege other claims in the event discovery of other information indicates they are appropriate.

32. WHEREFORE, for the foregoing reasons, Petitioner respectfully prays that U.S. Reg. No. 6489799 be canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,

By: /Meredith Lowry/

Meredith Lowry

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Attorneys for Petitioner

Pinnacle Pharmacy Group, LLC

Exhibit A

THE PHARMACY THAT DELIVERS

11 locations across Arkansas!

REFILL PRESCRIPTION



We offer a full range of services including retail, compounding, immunizations, free delivery, specialty services, and compliance packaging.



Locations

Visit a pharmacy near you at one of our 11 convenient locations across the state of Arkansas!

FIND A LOCATION



About Us

We are a locally owned community pharmacy dedicated to unparalleled, fast customer service.

LEARN MORE



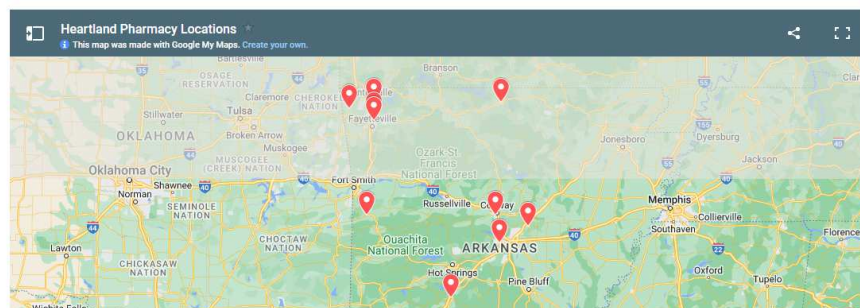
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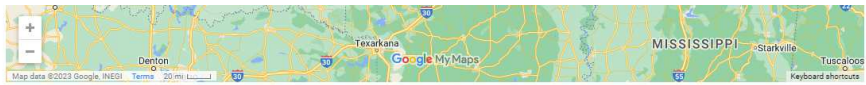
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- Order refills
- Set medication reminders
- Find out pharmacy location information
- Quick and easy access to all of your family's prescriptions

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Exhibit B

NDC 80136-381-24



ANTI-DIARRHEAL

Loperamide HCl 2 mg

Controls the symptoms
of Diarrhea



Compare to active
ingredient in **IMODIUM® A-D***

24 Caplets**

**capsule shaped tablets

 **Heartland**[™]
Pharma Co.

ZINC
50 mg

DIETARY SUPPLEMENT

100 TABLETS

NDC 80136-455-01

 **Heartland**
Pharma Co.

SENNAPLUS

STANDARDIZED SENNA CONCENTRATE
DOCUSATE SODIUM

NATURAL VEGETABLE LAXATIVE
WITH STOOL SOFTENER



Compare to active
ingredients in **SENOKOT-S[®]***

100 Tablets

NDC 80136-778-01

 **Heartland**
Pharma Co.

Meclizine Hydrochloride

Antiemetic • Antinausea

**FOR PREVENTION AND TREATMENT
OF MOTION SICKNESS**



Compare to active ingredient in
DRAMAMINE® ALL DAY LESS DROWSY*

100 Tablets • 25 mg Each

Drug Facts