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**UNITED STATES PATENT AND TRADEMARK
OFFICE**

Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

03-13-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #70

Mailed: March 6, 2003

Griffin, Nancy M.
775 E. Blithedale No 270
Mill Valley, CA 94941

Cancellation No. 92041697

Reg. No. 2136776

Stephanie J. James
Beck & Tysver, P.L.L.C.
2900 Thomas Avenue South, Suite 100
Minneapolis, MN 55416-4477

Wellness Resources, Inc.

V.

Griffin, Nancy M.

Eric McWilliams, Legal Assistant

A petition, a copy of which is attached, has been filed to
cancel the above-identified registration.

Proceedings will be conducted in accordance with the
Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Patent and Trademark Rule 1.7 for expiration date
falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the
Trademark Rules of Practice, set forth in Title 37, part 2,
of the Code of Federal Regulations. The parties are
reminded of the recent amendments to the Trademark Rules
that became effective October 9, 1998. See Notice of Final
Rulemaking published in the *Official Gazette* on September
29, 1998 at 1214 TMOG 145. Slight corrections to the
rules, resulting in a correction notice, were published in
the *Official Gazette* on October 20, 1998 at 1215 TMOG 64.

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TRADEMARK TRIAL AND
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A copy of the recent amendments to the Trademark Rules, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

Discovery and testimony periods are set as follows:

Discovery period to open:	March 26, 2003
Discovery period to close:	September 22, 2003
30-day testimony period for party in position of plaintiff to close:	December 21, 2003
30-day testimony period for party in position of defendant to close:	February 19, 2004
15-day rebuttal testimony period for plaintiff to close:	April 04, 2004

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

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

WELLNESS RESOURCES, INC.,)
)
Petitioner,)
)
v.)
)
NANCY GRIFFIN,)
)
Registrant/Current Owner)

In the matter of:
Reg. No. 2,136,776

For the mark:
THE WELLNESS RESOURCE

Registered on:
February 17, 1998

Cancellation No. _____

EU 769851664 US

PETITION TO CANCEL

Petitioner, Wellness Resources, Inc., a Minnesota corporation located and doing business at 6200 Excelsior Blvd., Suite 103, St. Louis Park, MN 55416, believes it is damaged by Registration No. 2,136,776 to Nancy Griffin, and hereby petitions to cancel same.

To the best of Petitioner's knowledge, the name and address of the current owner of the registration is Nancy Griffin, having an address at 775 E. Blithedale No 270, Mill Valley, CA 94941.

Here follows a description of Registration No. 2,136,776:

Mark:	THE WELLNESS RESOURCE
Services:	Educational services, namely, conducting classes of instruction in nutrition, exercise and a healthy lifestyle
Class:	Int'l Class 41
Registration date:	February 17, 1998
First Use Anywhere:	May 1, 1996
First Use in Commerce:	June 22, 1996
Disclaimer:	WELLNESS

COMMISSIONER FOR TRADEMARKS
PETITION FOR CANCELLATION
RE: REG. NO. 2,136,776
FEBRUARY 14, 2003

As grounds for this Petition for Cancellation, the Petitioner avers as follows:

1. Prior to any use of THE WELLNESS RESOURCE by Ms. Griffin, the Petitioner used WELLNESS RESOURCES in connection with educational services regarding health, nutrition, a healthy lifestyle and the like and in connection with vitamin and mineral supplements and the like. More specifically:

- a. On February 7, 1992, Stress/Energy Diagnostics, Inc. changed its corporate name to Wellness Resources, Inc. which has done business continuously since then providing goods and services relating to health, nutrition, a healthy lifestyle, and vitamin and mineral supplements under this name.
- b. Wellness Resources has, from 1992 to the present, provided educational services, such as workshops and classes, and counseling services in the field of health, nutrition, exercise and a healthy lifestyle for its customers under the mark WELLNESS RESOURCES.
- c. Wellness Resources, Inc. has, from 1992 to the present, sold and distributed vitamins and mineral supplements. Since at least as early as August 1, 1995, Wellness Resources, Inc. has sold vitamin and mineral supplements labeled WELLNESS RESOURCES.

- d. Petitioner has not abandoned and intends to continue its use of WELLNESS RESOURCES in connection with the goods and services described in the preceding paragraphs.
- e. Wellness Resources, Inc. is the owner of U.S. trademark Registration No. 2,132,232 for WELLNESS RESOURCES and design, with pertinent data as follows:

Goods and services:	vitamin and mineral supplements, in Int'l Class 5
Registration date:	January 27, 1998
First Use Anywhere:	August 1, 1995
First Use in Commerce:	August 8, 1995
Disclaimed:	WELLNESS

2. Petitioner has developed extensive goodwill and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion in the United States with respect to its WELLNESS RESOURCES mark and name.
3. WELLNESS RESOURCES is inherently distinctive when used in conjunction with the goods and services listed in Section 1 above. Even if WELLNESS RESOURCES was not inherently distinctive as so used, the Petitioner acquired distinctiveness in WELLNESS RESOURCES prior to Ms. Griffin's first use.
4. Petitioner's use of WELLNESS RESOURCES has been of a nature sufficient to create proprietary rights, i.e. Petitioner's use has created an association of the

name and trademark WELLNESS RESOURCES with the Petitioner, Wellness Resources, Inc. Petitioner has substantial common law rights in the name and trademark WELLNESS RESOURCES in connection with educational services and counseling services in the field of health, nutrition, and a healthy lifestyle and vitamin and mineral supplements. Further, Petitioner has federal statutory rights in the mark WELLNESS RESOURCES in conjunction with vitamins and mineral supplements.

5. Wellness Resources applied for a trademark registration, Serial No. 78/151797, filed August 7, 2002, for WELLNESS RESOURCES for the following goods and services:

- Vitamin and mineral supplements (Int'l Class 05);
- Instructional materials relating to health and nutrition (Int'l Class 16); and
- Educational and counseling services regarding health and nutrition (Int'l Class 45 – The Examiner has required that the application be amended to identify educational services in class 41 and the counseling services in class 44).

In the first Office Action, mailed January 2, 2003, the Examiner rejected Petitioner's application, Ser. No. 78/151797, on the grounds that "applicant's mark, when used on or in connection with the identified goods/services, so resembles the mark in U.S. Registration No. 2136776 as to be likely to cause confusion, to cause mistake, or to deceive."

6. Wellness Resources applied for a trademark registration, Serial No. 78/164,522, filed September 16, 2002, for WELLNESS RESOURCES and design for the following goods and services:
- Instructional materials relating to health and nutrition (Int'l Class 16); and
 - Educational and counseling services regarding health and nutrition (Int'l Class 45 – The Examiner has required that the application be amended to identify educational services in class 41 and the counseling services in class 44).

In the first Office Action, mailed February 6, 2003, the Examiner rejected Petitioner's application, Ser. No. 78/164522, on the grounds that "applicant's mark, when used on or in connection with the identified goods/services, so resembles the mark in U.S. Registration No. 2136776 as to be likely to cause confusion, to cause mistake, or to deceive."

7. Ms. Griffin's registered mark THE WELLNESS RESOURCE is closely similar in appearance, connotation, sound and commercial impression to the Petitioner's name and mark WELLNESS RESOURCES.
8. The services identified in Ms. Griffin's registration are closely related to the services provided and goods sold by Petitioner identified in Section 1 above.

9. In view of the similarity of the respective marks and the related nature of the services and goods of the parties, it is averred that Ms. Griffin's registration so resembles Petitioner's name and mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.

10. Further, Ms. Griffin's use of the mark THE WELLNESS RESOURCE in connection with the goods identified in her registration interferes with Petitioner's use of its WELLNESS RESOURCE name and mark and is likely to cause the public to believe that the Ms. Griffin's services originate with Petitioner, or vice versa, or that Ms. Griffin is owned or controlled by or in some manner affiliated or associated with Petitioner, or vice versa, or is otherwise likely to cause confusion, cause mistake or to deceive.

11. Ms. Griffin's use of the mark THE WELLNESS RESOURCE in connection with the services listed in her registration interferes with Petitioner's federal statutory rights conveyed by its Registration, No. 2,132,232, for WELLNESS RESOURCES, and is likely to cause confusion, or to cause mistake or to deceive.

12. Any defect, inadequacy or deficiency found in Ms. Griffin's services marketed under THE WELLNESS RESOURCE mark would reflect negatively on and seriously injure the reputation and goodwill associated with the goods and services provided by Petitioner and provided in connection with name and mark WELLNESS RESOURCES.

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13. Ms. Griffin's registration provides her a prima facie exclusive right to use the mark which is a source of damage and injury to Petitioner.

14. If, as the Trademark Examiners for Petitioner's applications, Serial No. 78/151,797 and 78/164,522, contends, Petitioner's mark so resembles Registrant's mark as to be likely, when applied to the goods and services of the Petitioner, to cause confusion or deceive, then Petitioner will be damaged by Ms. Griffin's registration because the Petitioner's application for registration will be refused and Petitioner will be denied its right, due to priority of use of WELLNESS RESOURCES, to obtain registrations with attendant statutory advantages such as a prima facie exclusive right to use WELLNESS RESOURCES.

WHEREFORE, Petition prays that Registration No. 2136776 be cancelled and that this Petition be sustained in favor of Petitioner.

A duplicate copy of this Petition for Cancellation and the fee of \$300 pursuant to 37 C.F.V. §2.6(a)(17) are enclosed herewith.

Petitioner has appointed Stephanie J. James, Daniel A. Tysver, Robert C. Beck and Rudolph P. Hofmann, who are attorneys admitted to practice in Minnesota, all of whom are affiliated with the law firm of Beck & Tysver, P.L.L.C., 2900 Thomas Ave. S., Suite 100, Minneapolis, MN 55416, as its duly authorized agents and attorneys in the matter of this cancellation proceeding, with full power of substitution and revocation, to

COMMISSIONER FOR TRADEMARKS
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RE: REG. NO. 2,136,776
FEBRUARY 14, 2003

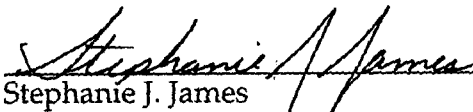
transact all business with the Patent and Trademark Office, including the Trademark Trial and Appeal Board, and elsewhere in the United States courts in connection with this cancellation, to sign all papers which may be hereinafter filed in connection with this cancellation proceeding, and to receive all communications relating to this cancellation proceeding.

CERTIFICATE OF MAILING

I hereby certify the foregoing Petition for Cancellation is being deposited with the United States Postal Service "Express Mail Post Office to Addressee", Label No. EU769851664US, postage prepaid, in an envelope addressed to Assistant Commissioner for Trademarks, Box TTAB - FEE, 2900 Crystal Drive, Arlington, VA 22202-3513, on this 14th day of February, 2003.

Respectfully submitted,

2/14/03
Date


Stephanie J. James
Attorney for Petitioner
Beck & Tysver, P.L.L.C.
2900 Thomas Avenue South
Suite 100
Minneapolis, MN 55416-4477
Tel.: (612) 915-9636
Fax: (612) 915-9637

02-14-2003

2732 REGISTER

U.S. Patent & TMO/c/TM Mail Rpt Dt. #7C

2732

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Petitioner: Wellness Resources, Inc.
Mark: THE WELLNESS RESOURCE
Reg. No.: 2,136,776
Registered: February 17, 1998
Registrant: Nancy Griffin
Int'l Class: 5
Atty. Ref. No.: 2732
Cancellation No.: _____

EXPRESS MAIL
 EU769851664US
 (Label No.)

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 in an envelope addressed to: Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on
2/14/03
 (Date)

Stephanie J. James
 (Name)

Stephanie J. James
 (Signature)

2/14/03
 (Date of Signature)

TRANSMITTAL LETTER

Assistant Commissioner for
 Trademarks
 2900 Crystal Drive
 Arlington, VA 22202-3513

Dear Sir:

Enclosed for filing with the United States Patent and Trademark Office are the documents listed below.

- Petition to Cancel;
- A self-addressed return postcard in accordance with T.M.E.P. §703 itemizing all of the above-referenced documents filed with the United States Patent and Trademark Office.

Please charge any additional fees not covered by our check to Deposit Account 500-246.

Date: 2/14/0

Stephanie J. James

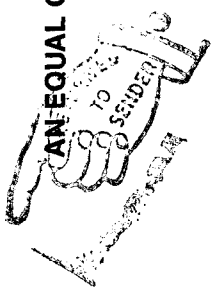
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DD

AFTER 10 DAYS RETURN TO:

UNITED STATES DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
ARLINGTON, VA 22202-3513

OFFICIAL BUSINESS
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GRIFFIN, NANCY M.

MILL VALLEY, CA 94941