

ESTTA Tracking number: **ESTTA128451**

Filing date: **03/07/2007**

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	AVS, Inc.		
Entity	Corporation	Citizenship	New York
Address	358 East 204th Street Bronx, NY 10467 UNITED STATES		

Attorney information	Laura E. Smith Kalow & Springut LLP 488 Madison Avenue New York, NY 10022 UNITED STATES lsmith@creativity-law.com Phone:212-813-1600
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**Registrations Subject to Cancellation**

Registration No	2552056	Registration date	03/26/2002
Registrant	Laboratorios Le Roy, S.A. de C.V. Azucar No. 107 Col. Granjas Mexico 08400, D.F. MEXICO		
Goods/Services Subject to Cancellation	Class 010. First Use: 1994/07/00 , First Use In Commerce: 1994/07/00 Goods/Services: elastic bandages; medical bandages, namely compression bandages; orthopedic bandages		
Registration No	2585352	Registration date	06/25/2002
Registrant	Laboratorios Le Roy, S.A. de C. V. Azucar No. 107 Col. Granjas Mexico 08400, D.F. MEXICO		
Goods/Services Subject to Cancellation	Class 005. First Use: 1994/07/00 , First Use In Commerce: 1994/07/00 Goods/Services: medical bandages, namely wound dressings		

Attachments	AVS Petit.pdf ( 3 pages )(81201 bytes )
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Signature	/LES/
Name	Laura E. Smith
Date	03/07/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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AVS Inc.  
*Petitioner,*

Cancellation No.

v.

Laboratories Le Roy, S.A. de C.V.  
*Registrant*

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PETITION FOR CANCELLATION

Marks sought to be cancelled: Registration nos. 2,585,352 and 2,552,056 for the mark LE ROY and design.

Petitioner, AVS Inc. is a corporation organized and existing under the laws of the State of New York, doing business at 358 East 204th Street, Bronx, New York, 10467.

To the best of the Petitioner's knowledge, the owner of the subject registrations is Laboratories Le Roy, S.A. de C.V., a corporation organized and existing under the laws of Mexico, doing business at Azucar No.107 Col. Granjas, Mexico 08400 Mexico, D.F.

The Petitioner believes that it is being damaged by the above referenced registrations and hereby petitions to cancel same.

The grounds for the cancellation are as follows:

1. Petitioner, through its predecessors in interest has used and never abandoned the mark LEROY PHARMACY which has been used in Interstate Commerce which Congress may regulate, in connection with retail drug store and pharmacy services since at least 1930, at least sixty (60) years before the Registrant's first use of its marks in Commerce in the United States. As a result of such long use by Petitioner, Petitioner has developed valuable goodwill and Common Law rights to the mark.

2. Petitioner is currently seeking registration of the mark LEROY PHARMACY in connection with "retail drug store and pharmacy services" through application serial no. 78/735352.

3. In an Office Action dated September 7, 2006, the Examining Attorney issued a final refusal to register the Petitioner's mark based on the grounds that the Petitioner's mark, LEROY PHARMACY, is confusingly similar to the Registrant's LE ROY and design marks which are the subject of registration nos. 2,585,352 and 2,552,056, for "medical bandages, namely wound dressings" and "elastic bandages; medical bandages, namely compression bandages; orthopedic bandages", respectively.

4. If, as the Examining Attorney has asserted, in the Office Action dated September 7, 2006 for application serial number 78/735352, the registered mark LE ROY and design as applied to the identified goods is confusingly similar to Petitioner's mark LEROY PHARMACY as used with the identified services, the Petitioner is damaged by the existence of registration nos. 2,585,352 and 2,552,056 sought to be cancelled herein.

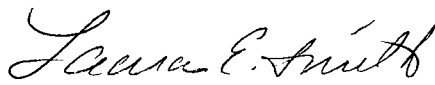
5. If registration nos. 2,585,352 and 2,552,056 are not cancelled, Petitioner will be damaged by reason of the confusion which will likely result between the Petitioner's mark and the Registrant's marks and by reason of its inability to register the mark in application serial number 78/735352.

WHEREFORE, it is respectfully requested that the Petition be granted and that the subject registration be canceled in due course.

The \$600 filing fee is being submitted electronically. Any deficiency should be charged to Deposit Account No. 110171-9439.

Respectfully Submitted,

AVS Inc.

By:   
Attorneys for Petitioner  
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March 7, 2007