

ESTTA Tracking number: **ESTTA145707**

Filing date: **06/13/2007**

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	In Skin, Inc.		
Entity	Corporation	Citizenship	Florida
Address	2300 S. Dixie Highway Miami, FL 33176 UNITED STATES		

Attorney information	David A. Gast Malloy & Malloy, P.A. 2800 SW 3rd Ave. Miami, FL 33129 UNITED STATES dgast@malloylaw.com, litigation@malloylaw.com Phone:(305) 858-8000
----------------------	--

**Registration Subject to Cancellation**

Registration No	2837876	Registration date	05/04/2004
International Registration No.	NONE	International Registration Date	NONE
Registrant	Cosmeceutic Solutions Pty Ltd Level 34, 360 Collins Street Melbourne Victoria 3000, AUSTRALIA		
Goods/Services Subject to Cancellation	<p>Class 003 Goods/Services: Soaps, perfumery, essential oils for personal use, cosmetics, skin cleansers, cleansing milk for toiletry purposes, cosmetic creams, lotions for cosmetic purposes, gel for cosmetic purposes, oils for cosmetic purposes, sprays for topical application for cosmetic purposes, skin care preparations, cosmetic preparations for slimming purposes, plant extract compositions for cosmetic purposes, moisturizers, hair care products and dentifrices, cosmetic kits consisting of one or more of the foregoing goods</p> <p>Class 005 Goods/Services: Pharmaceuticals, veterinary preparations, fungicides, medicated compositions for topical application, antibacterial compositions for medical use, antivirals for medical use; acne treatment preparations, medicated skin preparations for use in treating skin disease, topical compositions for medical and therapeutic use, namely topical aerosols, gels, creams, lotions, solutions, sprays, ointments and pastes for the treatment of scarred and damaged skin, topical and transdermal preparations for medical and therapeutical use</p>		

Attachments	76662609#TMSN.gif ( 1 page )( bytes ) Petition to Cancel - INSKIN.pdf ( 5 pages )(27478 bytes )
-------------	--

Signature	/David A. Gast/
Name	David A. Gast
Date	06/13/2007

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

In the Matter of Registration No. 2,837,876  
For the Mark: "INSKIN"  
Date Registered on Principal Register: May 4, 2004

---

IN SKIN, INC.,	)	
a Florida Corporation,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Cancellation No.
	)	
COSMECEUTIC SOLUTIONS PTY LTD	)	
an Australian Company	)	
	)	
Registrant.	)	

---

PETITION TO CANCEL

COMES NOW the Petitioner, In Skin, Inc. ("In Skin" or "Petitioner"), a Florida corporation having an address of 2300 S. Dixie Highway, Miami, Florida 33176, and petitions to cancel Registration No. 2,837,876 owned by Cosmeceutic Solutions, Pty Ltd, an Australian company, with a address of Level 34, 360 Collins Street, Melbourne, Victoria 3000, Australia ("Cosmeceutic" or "Registrant"). Petitioner believes that it has been or will be damaged by Registration No. 2,837,876, and alleges the following to petition for cancellation of the same:

LIKELIHOOD OF CONFUSION UNDER SECTION 2(d)

1. The alleged trademark sought to be cancelled is Registration No. 2,837,876, for the alleged mark "INSKIN"

("Registrant's Mark") for use in connection with the following goods:

"Soaps, perfumery, essential oils for personal use, cosmetics, skin cleansers, cleansing milk for toiletry purposes, cosmetic creams, lotions for cosmetic purposes, gel for cosmetic purposes, oils for cosmetic purposes, sprays for topical application for cosmetic purposes, skin care preparations, cosmetic preparations for slimming purposes, plant extract compositions for cosmetic purposes, moisturizers, hair care products and dentifrices, cosmetic kits consisting of one or more of the foregoing goods," in International Class 003 and

Pharmaceuticals, veterinary preparations, fungicides, medicated compositions for topical application, antibacterial compositions for medical use, antivirals for medical use; acne treatment preparations, medicated skin preparations for use in treating skin disease, topical compositions for medical and therapeutic use, namely topical aerosols, gels, creams, lotions, solutions, sprays, ointments and pastes for the treatment of scarred and damaged skin, topical and transdermal preparations for medical and therapeutic use," in International Class 005.

(hereafter "Registrant's Goods") filed October 25, 2002, under the filing basis of Section 1B and Section 44D, but with a resulting registration on May 4, 2004, under Section 44E.

2. Petitioner has filed its own application, Serial No. 76/662,609, with the United States Patent and Trademark Office to register its mark "IN SKIN" (hereafter "Petitioner's Mark") for use in connection with the following goods and services:

"Customized skin care preparations, and cosmetics, namely, eyeliners, concealers, lip liners, lipsticks, blushes, creamy blushes, face powders, compact face powders, loose face powders, make-up, camouflage make-up, eye creams, non-medicated eye serums, facial creams, skin moisturizers, hydrating cosmetic pads, facial hydrating mist, face peel creams, body creams, lotions for skin, face and body, soothing gels for eyes, non-medicated skin

serums, non-medicated skin lifting serums, lightening face creams, non-medicated skin bleaching serums, skin cleansers, body and facial scrubs, sun block creams and sprays, disposable pads impregnated with sun block creams, skin bronzing creams, non-medicated acne creams, non-medicated acne skin cleansers, non-medicated acne facial mask, non-medicated acne cream impregnated disposable pads, therapeutic astringents for cosmetic purposes, lip balms, non-medicated therapeutic body scrubs, non-medicated therapeutic lotions for skin, face, and body, non-medicated therapeutic shaving creams," in International Class 3; and

"Customized skin care services, namely, facial treatments, deep cleansing facial treatments, deep pore acne facial treatment, oxygen facial treatment, anti-aging facial treatment, photo rejuvenation, radio frequency skin lifting, skin peels, chemical peels, enzyme and glycolic peels, microdermabrasion, botox treatment, collagen, and restylane enhancement procedures for face and lips and wrinkles, facial waxing, body waxing, laser hair removal, lash and eyebrow tinting and ear candling," in International Class 44.

(hereafter "Petitioner's Goods and Services"). Registration No. 2,837,876 was cited against Petitioner's pending application, Serial No. 76/662,609 under Section 2(d) of the Lanham Act, and as a result, Petitioner is likely to be damaged by continued registration of Registrant's Mark.

3. Since long prior to any date upon which Registrant may rely, Petitioner, and/or its predecessors, adopted and used the inherently distinctive designation and trademark "IN SKIN" for and in connection with Petitioner's Goods and Services.

4. Petitioner's Mark has been adopted and used in commerce by Petitioner and/or its predecessors since at least as early as December 1993 in the United States. Such adoption and use of the mark was in interstate commerce, and since that time, the mark has

been in continuous use in interstate commerce and has not been abandoned.

5. Petitioner has expended considerable time, money, and effort in promoting its services under the "IN SKIN" trademark. The strength of the "IN SKIN" trademark has continuously grown, such that Petitioner has established exceedingly valuable goodwill.

6. There is a likelihood of confusion between Petitioner's "IN SKIN" trademark for Petitioner's Goods and Services and Registrant's "INSKIN" trademark for Registrant's Goods, as set forth in Registration No. 2,837,876.

7. If Registrant is permitted to maintain said registration for Registrant's Mark in connection with Registrant's Services, there will be a continued likelihood of confusion, mistake, and deception among the consuming public and the trade, all in violation of §2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

#### ABANDONMENT

8. Petitioner repeats and re-alleges each and every allegation contained in paragraphs 1 through 7 as if fully set forth herein.

9. Upon information and belief, Registrant discontinued use of its "INSKIN" trademark with the intent not to resume use.

10. Upon information and belief, Registrant has never made use of its "INSKIN" trademark in United States commerce.

11. Upon information and belief, Registrant has not used the

"INSKIN" trademark in connection with Registrant's Goods.

12. In view of the above allegations, Registrant has abandoned Registrant's "INSKIN" trademark, as defined in Section 45 of the Trademark Act, 15 U.S.C. §1127, and as such is not entitled to continue registration of its alleged mark.

WHEREFORE, Petitioner prays that this Petition to Cancel be granted and that the aforesaid Registration No. 2,837,876 be cancelled and removed from the Federal Registry. An electronic copy of this Petition to Cancel and the fee required in 37 C.F.R §2.6(a)(16) are enclosed herewith.

Respectfully submitted,

Dated: June 13, 2007

By: /s David A. Gast  
John Cyril Malloy, III  
Florida Bar No. 964,220  
David A. Gast  
Florida Bar No. 176,567  
dgast@malloylaw.com  
MALLOY & MALLOY, P.A.  
Attorneys for Petitioner  
2800 S.W. Third Avenue  
Miami, Florida 33129  
Telephone: (305) 858-8000  
Facsimile: (305) 858-0008