

ESTTA Tracking number: **ESTTA292210**

Filing date: **06/29/2009**

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	Dental Sleep Solutions Franchising, LLC		
Entity	LLC	Citizenship	Florida
Address	3909 E. Bay Drive Suite 205 Holmes Beach, FL 34217 UNITED STATES		

Attorney information	Lindsey M. Straus Law Offices of Suzanne C. Cummings and Associates, P.C. Two Main Street Suite 300 Stoneham, MA 02180 UNITED STATES lstraus@scummingslaw.com Phone:(508) 896-8008		
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Registration Subject to Cancellation

Registration No	3600648	Registration date	03/31/2009
Registrant	Terry K. Lowitz, D.D.S., Inc. 8712 Winton Road Cincinnati, OH 45231 UNITED STATES		

Goods/Services Subject to Cancellation


Class 044. First Use: 2008/10/13 First Use In Commerce: 2008/10/13 All goods and services in the class are cancelled, namely: Dentist services

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77398171	Application Date	02/15/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DENTAL SLEEP SOLUTIONS		

Design Mark	
Description of Mark	The mark consists of an outline of a quarter moon with face, three stars and the words "DENTAL SLEEP" with a curved line thereunder below the line being the word "SOLUTIONS".
Goods/Services	<p>Class 040. First use: First Use: 2005/05/15 First Use In Commerce: 2005/05/15 Custom construction of individualized orthotic appliances to be worn while sleeping for the treatment of sleep apnea and snoring</p> <p>Class 044. First use: First Use: 2005/05/15 First Use In Commerce: 2005/05/15 Dental services, namely, fitting of individualized orthotic appliances to be worn while sleeping for the treatment of sleep apnea and snoring</p>
Attachments	77398171#TMSN.jpeg (1 page)(bytes) Petition for Cancellation signed.pdf (2 pages)(106226 bytes)

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	/Lindsey M. Straus/
Name	Lindsey M. Straus
Date	06/29/2009

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

DENTAL SLEEP SOLUTIONS
FRANCHISING, LLC

Petitioner

V.

TERRY K. LOWITZ, D.D.S, INC.

Respondent

CANCELLATION NO.
REGISTRATION NO. 3600648

PETITION TO CANCEL REGISTRATION ON SUPPLEMENTAL REGISTER

Dental Sleep Solutions Franchising, LLC (“Petitioner”), pursuant to 15 U.S.C. §1092, petitions the Director of Trademarks to cancel Registration No. 3600648 of the Respondent, Terry K. Lowitz, D.D.S., Inc. (“Respondent”). In support of its petition, Petitioner states as follows:

1. Petitioner is the owner by assignment of a composite mark, Dental Sleep Solutions (“Mark”)
2. On February 15, 2008, Petitioner applied to the United States Patent & Trademark Office (“USPTO”) for registration of the Mark on the Principal Register (Serial No. 77398171).
3. On June 2, 2009, the USPTO published the Mark for Opposition.
4. Respondent is the owner of a word mark, Dental Solutions for Sleep Apnea (“Infringing Mark”).
5. On October 29, 2008, Respondent applied to the USPTO for registration of the Infringing Mark on the Supplemental Register (Serial No. 77603254).

6. At the time Respondent applied for registration of the Infringing mark on the Supplemental Register, Respondent was on constructive notice of Petitioner's application for the Mark.

7. On March 31, 2009, Respondent's Infringing Mark was registered on the Supplemental Register.

8. The Infringing Mark is confusingly similar to Petitioner's Mark as a matter of law.

9. Respondent is not entitled to concurrent use of the Infringing Mark in the specific geographical area in which it operates because its use of the Infringing Mark began after February 15, 2008, the date on which Petitioner applied for registration of the Mark on the Principal Register.

WHEREFORE, Petitioner prays that registration of the Infringing Mark on the Supplemental Register be cancelled.

This Petition is being filed by the undersigned attorney, duly authorized to represent Petitioner in this proceeding.

DENTAL SLEEP SOLUTIONS
FRANCHISING INC.

By its attorney,



Lindsey M. Straus, Esquire
Law Office of Suzanne C. Cummings
114 Harwich Road
Brewster, MA 02631
(508) 896-8008

Dated: June 29, 2009