

ESTTA Tracking number: **ESTTA344017**

Filing date: **04/26/2010**

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

| | | | |
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| Name | Charles F. Hudson Jr. | | |
| Entity | Individual | Citizenship | UNITED STATES |
| Address | 10337 N.W. Highway 27 Ocala, FL 34482 UNITED STATES | | |

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| Attorney information | Douglas Wm. Massinger, Esq. MASSINGER LAW OFFICES 887 NE 100 Street Ocala, FL 34479 UNITED STATES massinger@earthlink.net Phone:(352) 351-0351 | | |
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Registration Subject to Cancellation

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|-----------------|---|-------------------|------------|
| Registration No | 3482513 | Registration date | 08/05/2008 |
| Registrant | FNC Medical Corporation 6000 Leland Street Ventura, CA 93003 UNITED STATES | | |

Goods/Services Subject to Cancellation

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| Class 005. First Use: 2006/04/00 First Use In Commerce: 2006/04/00 All goods and services in the class are cancelled, namely: Natural insecticide for horses |
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Grounds for Cancellation

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

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| U.S. Application No. | 77143869 | Application Date | 03/29/2007 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | SHOO-FLY | | |

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|---------------------|---|
| Design Mark | SHOO-FLY |
| Description of Mark | NONE |
| Goods/Services | Class 005. First use: First Use: 1982/10/08 First Use In Commerce: 1982/10/08 Insecticides for use in equine and bovine environments Class 007. First use: First Use: 1982/10/08 First Use In Commerce: 1982/10/08 Insecticide dispensing systems, namely, power-operated sprayers for insecticide for use in animal environments, namely, equine and bovine |

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|----------------------|----------|-----------------------|------------|
| U.S. Application No. | 77144541 | Application Date | 03/30/2007 |
| Registration Date | NONE | Foreign Priority Date | NONE |

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| Word Mark | SHOO-FLY |
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|-------------|---|
| Design Mark |  |
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| Description of Mark | The mark consists of Stylized lettering of the word "SHOO-FLY" with a logo comprised of a simulated length of tubing extending from the letter "S" terminating in a simulated nozzle dispensing a mist over an inverted fly in front of a tombstone. |
| Goods/Services | Class 005. First use: First Use: 1982/10/08 First Use In Commerce: 1982/10/08 Insecticides for use in equine and bovine environments Class 007. First use: First Use: 1982/10/08 First Use In Commerce: 1982/10/08 Insecticide dispensing systems, namely power-operated sprayers for insecticide for use in animal environments, namely equine and bovine |

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| Attachments | 77143869#TMSN.jpeg (1 page)(bytes) 77144541#TMSN.jpeg (1 page)(bytes) Petition For Cancellation 3482513.pdf (5 pages)(80482 bytes) |
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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.

| | |
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| Signature | /Douglas Wm. Massinger, Esq./ |
| Name | Douglas Wm. Massinger, Esq. |
| Date | 04/26/2010 |

In The Matter of Registration No. 3482513
For the mark **SHOO FLY**
Date of Issue: June 30, 2008

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

In The Matter of Registration No. 3482513
For the mark **SHOO FLY**
Date of Issue: June 30, 2008

Charles F. Hudson, Jr.)
Petitioner,)
v.)
FNC Medical Corporation)
Registrant.)

Cancellation No.:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

PETITION FOR CANCELLATION

Charles F. Hudson, Jr., an adult individual whose address is 10337 N.W. Highway 27, Ocala, Florida 34482 (hereinafter "Petitioner") believes that he is and will be damaged by the U.S. Trademark Registration No. 3482513 for the mark **SHOO FLY** (word mark) directed to "Natural insecticide for horses" which issued on the Principal Register on June 30, 2008 and whose last listed owner is FNC Medical Corporation a corporation whose address is 6000 Leland St. Ventura, CA 93003 (hereinafter "Registrant") and hereby petitions to cancel the registration of this mark.

As grounds therefore, it is alleged that:

1. On March 29, 2007, Petitioner filed an application to register the mark **SHOO-FLY**

(word mark) (“Petitioner Application No. 1”) with the U.S. Patent and Trademark Office. This application attested to the Petitioner’s use of the mark **SHOO-FLY** in interstate commerce on or in connection with “Insecticides for use in equine and bovine environments” in International Class 5 as well as “Insecticide dispensing systems, namely power-operated sprayers for insecticide for use in animal environments, namely equine and bovine” in International Class 7. The Application was assigned serial number 77/143869.

2. On March 30, 2007, Petitioner filed an application to register the mark **SHOO-FLY** (stylized) (“Petitioner Application No. 2”) with the U.S. Patent and Trademark Office. This application attested to the Petitioner’s use of the mark **SHOO-FLY** in interstate commerce on or in connection with “Insecticides for use in equine and bovine environments” in International Class 5 as well as “Insecticide dispensing systems, namely power-operated sprayers for insecticide for use in animal environments, namely equine and bovine” in International Class 7. The Application was assigned serial number 77/144541.

3. Petitioner Application No. 1 and Petitioner Application No. 2 are together hereinafter referred to as “Petitioner’s Applications”. Petitioner’s marks, **SHOO-FLY** (word mark) and **SHOO-FLY** (stylized) are together hereinafter referred to as the “**SHOO-FLY** Marks”.

4. Petitioner has adopted and continuously used the **SHOO-FLY** Marks, since at least as early as **October 8, 1982**, as attested to in Petitioner’s Applications.

5. Registration No. 3,482513, sought to be cancelled, is for the trademark **SHOO FLY**, registered for use on “Natural insecticide for horses” in International Class 5. Such goods are closely related, if not identical, to those of Petitioner.

6. Petitioner has been damaged in that its **SHOO-FLY** Marks identified in Petitioner's Applications have each been refused registration based on Registration No. 3,482,513 of Registrant.

7. There is no issue as to priority of use. Petitioner's **SHOO-FLY** Marks have been used in connection with Petitioner's goods more than 25 years prior to Registrant's date of first use of February 1, 2007.

8. Petitioner has expended considerable effort and expense in promoting its **SHOO-FLY** Marks and the goods sold under such Marks, with the result that the purchasing public has come to know, rely upon, and recognize the products of Petitioner by such Marks. Petitioner has sold and continues to sell, directly and through its network of distributors, the goods listed in Petitioner's Applications under the **SHOO-FLY** Marks throughout the United States and internationally. Petitioner has developed an exceedingly valuable reputation and goodwill in respect to its **SHOO-FLY** Marks.

9. If the Registrant is permitted to retain the registration sought to be cancelled, and thereby, the prima facie exclusive right to use in commerce the mark **SHOO FLY** on goods closely related to those sold by Petitioner, confusion in trade is likely to result from any concurrent use of Petitioner's marks and that of the Registrant all to the great detriment of Petitioner, who has expended considerable sums and effort in promoting its marks.

10. Purchasers are likely to consider the goods of the Registrant sold under the mark **SHOO FLY** as emanating from Petitioner, and purchase such goods as those of the Petitioner, resulting in loss of sales to Petitioner.

11. Concurrent use of Petitioner's **SHOO-FLY** Marks and Registrant's **SHOO FLY**

In The Matter of Registration No. 3482513
For the mark **SHOO FLY**
Date of Issue: June 30, 2008

mark may result in irreparable damage to Petitioner's hard-earned reputation and goodwill, if any objection, defect or fault is found with Registrant's products since purchasers are likely to attribute the source of the Registrant's goods to the Petitioner.

12. If the Registrant is permitted to retain the registration sought to be cancelled, a cloud will be placed on Petitioner's title in and to its **SHOO-FLY** Marks, and on its right to enjoy the free and exclusive use thereof in connection with the sale of its goods, all to the great injury of Petitioner.

WHEREFORE, Petitioner prays that Registration No. 3,482,513 be canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

Respectfully submitted,
Charles F. Hudson, Jr.
Petitioner

Date: April 26, 2009

By: s/Douglas Wm. Massinger
Douglas Wm. Massinger, Esq.
USPTO Reg. No. 35,942
Attorney for Petitioner

MASSINGER LAW OFFICES
887 N.E. 100 Street
Ocala, FL 34479
(352) 351-0351
massinger@earthlink.net

In The Matter of Registration No. 3482513
For the mark **SHOO FLY**
Date of Issue: June 30, 2008

CERTIFICATE OF FILING

I hereby certify that this PETITION FOR CANCELLATION of U.S. Trademark Registration No. 3,482,513 for the mark SHOO FLY is being filed with the Trademark Trial and Appeal Board using the ESTTA filing system of the U.S. Patent and Trademark Office on the below date.

Date: April 26, 2010

s/Douglas Wm. Massinger

CERTIFICATE OF SERVICE

I hereby certify that this PETITION FOR CANCELLATION of U.S. Trademark Registration No. 3,482,513 for the mark SHOO FLY is being duly served upon the Applicant by mailing a copy thereof via the U.S. Postal Service in a sealed envelope as first class mail with postage thereupon fully prepaid and addressed to:

FNC Medical Corporation
6000 Leland Street
Ventura, CA 93003

Date: April 26, 2010

s/Douglas Wm. Massinger