

ESTTA Tracking number: **ESTTA359944**

Filing date: **07/26/2010**

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

| | |
|------------------------|---|
| Proceeding | 92052554 |
| Party | Defendant Foundations Developmental House |
| Correspondence Address | FOUNDATIONS DEVELOPMENTAL HOUSE 1815 E. QUEEN CREEK ROAD, STE. 1 CHANDLER, AZ 85286-2017 UNITED STATES lynn@fdhkids.com |
| Submission | Answer and Counterclaim |
| Filer's Name | KEITH LORIN JENKINS |
| Filer's e-mail | Keith@jenkinspatentlaw.com, jenkinspatentlaw@gmail.com |
| Signature | /Keith L. Jenkins/ |
| Date | 07/26/2010 |
| Attachments | Answer_CY10030_final_uploadable_Bw.pdf (22 pages)(8628257 bytes) |

Registrations Subject to the filing

| | | | |
|--------------------|---|-------------------|------------|
| Registration No | 2757491 | Registration date | 08/26/2003 |
| Registrant | Janus Development Group, Inc. 112 Staton Road Greenville, NC 27834 UNITED STATES | | |
| Grounds for filing | The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. | | |

Goods/Services Subject to the filing

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| Class 010. First Use: 2001/09/30 First Use In Commerce: 2001/11/30 All goods and services in the class are requested, namely: Speech therapy device, namely, apparatus to ameliorate stuttering using receiver, auditory delay and/or frequency shift circuit, and transmitter; speech therapy device, namely, apparatus to ameliorate stuttering configures for positioning in or adjacent to the ear |
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| | | | |
|--------------------|---|-------------------|------------|
| Registration No | 2730722 | Registration date | 06/24/2003 |
| Registrant | Janus Development Group, Inc. 1800 North Greene Street Greenville, NC 278349018 UNITED STATES | | |
| Grounds for filing | The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. | | |

Goods/Services Subject to the filing

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|---|
| Class 010. First Use: 2001/09/30 First Use In Commerce: 2001/11/30 All goods and services in the class are requested, namely: Speech therapy device; namely, apparatus to ameliorate stuttering using receiver, auditory delay and/or frequency shift circuit, and |
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| transmitter; Speech therapy device, namely, apparatus to ameliorate stuttering configured for positioning in or adjacent to the ear |
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|-----------------|---|-------------------|------------|
| Registration No | 3005850 | Registration date | 10/11/2005 |
| Registrant | Janus Development Group, Inc. 112 Staton Road Greenville, NC 27834 UNITED STATES | | |

Goods/Services Subject to the filing

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| Class 010. First Use: 2002/01/01 First Use In Commerce: 2002/01/01 All goods and services in the class are requested, namely: Speech therapy devices, namely, apparatus to ameliorate stuttering using receiver, auditory delay and/or frequency shift circuit, and transmitter; speech therapy device, namely, apparatus to ameliorate stuttering configured for positioning in or adjacent to the ear |
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|-----------------|---|-------------------|------------|
| Registration No | 3619972 | Registration date | 05/12/2009 |
| Registrant | Janus Development Group, Inc. 112 Staton Road Greenville, NC 27834 UNITED STATES | | |

Goods/Services Subject to the filing

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| Class 010. First Use: 2009/02/11 First Use In Commerce: 2009/02/11 All goods and services in the class are requested, namely: Speech therapy device, namely, apparatus to ameliorate stuttering using receiver, auditory delay or frequency shift circuit or combination of auditory delay and frequency shift circuit, and transmitter; speech therapy device, namely, apparatus to ameliorate stuttering configured for positioning in or adjacent to the ear |
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Mark: SPEECH-EZ
Serial No.: 3785935
Publication Date: July 7, 2009

| | | |
|---------------------------------------|---|----------------------------|
| Janus Development Group, Inc., |) | Cancellation No.: 92052554 |
| |) | |
| Petitioner, |) | RESPONDENT’S ANSWER |
| |) | |
| vs. |) | |
| |) | |
| Foundations Developmental House, LLC, |) | |
| |) | |
| Respondent. |) | |

U.S. Patent & Trademark Office
Trademark Trial & Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

Respondent Foundations Developmental House LLC, by and through its attorney, Keith L. Jenkins, submits RESPONDENT’S ANSWER to Petitioner’s Petition for Cancellation (hereinafter, the “Petition”) as follows:

1. Paragraph one of the Petition is denied as to the address. Respondent has found a record in the North Carolina Secretary of State’s Office of a Janus Development Group, Inc., located at 112 Staton Road, Greenville, NC, 27858 and a record in the US Postal Service assigning that street address a zip code of 27834. Applicant admits that a Janus Development Group, Inc. is a North Carolina Corporation.

2. In response to paragraph 2 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them.

3. In response to paragraph 3 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. According to the chart on pages 2-4 of the Petition, the only marks first used in 2001 were SPEECH EASY (two separate words) and SPEECHEASY logo design. “SPEECHEASY”, as all one word and without design or addition, is NOT found to be a mark registered by Petitioner.

4. In response to paragraph 4 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. “SPEECHEASY”, as all one word and without design or addition, is NOT found to be a mark registered by Petitioner.

5. In response to paragraph 5 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding foreign trademarks and contestable trademarks (3,005,850 and 3,619,972) in this paragraph, and on that ground, denies them. The US registrant of the SpeechEasy logo design mark registration no. 2,730,722 has an address on 1800 North Green Street. Respondent admits that Petitioner has incontestable trademark registration 2,757,491 and lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding trademark registration 2,730,722. Respondent adopts herein Petitioner’s convention as to the meaning of “Petitioner’s Mark” to refer to Petitioner’s registered marks collectively, except as otherwise clearly shown by context.

6. In response to paragraph 6 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. Respondent regards paragraph 6 of the Petition as one element of an improper attempt

to expand Petitioner's alleged trademark rights in marks that are only for goods to cover the services of the alleged licensees of Petitioner's alleged trademarks for goods.

7. In response to paragraph 7 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. Respondent regards paragraph 7 of the Petition as another element of an improper attempt to expand Petitioner's alleged trademark rights in marks that are only for goods to cover the services of the alleged licensees of Petitioner's alleged trademarks for goods.

8. In response to paragraph 8 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. On information and belief, nine of the listed domain names are merely pointers to the speecheasy.com site, and so have no independent commercial impression capability. Speecheasy.de is a mere pointer to sprechmanager.de, the German language pages of which do not, as of this writing, display the SPEECHEASY mark. An English Language page on sprechmanger.de uses the term "SpeechEasy", but not as the logo mark allegedly registered by Petitioner as a European Community Trademark (CTM). Speecheasy.nl is a mere pointer to medsy.nl, a Dutch site that does display the term "SpeechEasy" but not as the logo mark allegedly registered by Petitioner as a CTM. Speecheasy.pt is a mere pointer to speecheasy.com.pt, a Portuguese site that does display the term "SpeechEasy", but not as the logo mark allegedly registered by Petitioner as a CTM. Speecheasy.no is a Norwegian site that does display the term "SpeechEasy" but not as the logo mark allegedly registered by Petitioner as a Norwegian mark. As of this writing, none of the foreign sites display either of Petitioner's allegedly incontestable registrations.

9. In response to paragraph 9 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them.

10. Respondent admits the allegations of paragraph 10 of the Petition.

11. Respondent denies the allegation of the description of services of paragraph 11 of the Petition. The description of services in Respondent's original trademark application of March 5, 2009 is as shown in Petitioner's Exhibit B, speaks for itself, and is not the description of services misleadingly quoted by Petitioner in paragraph 11 of the Petition. Respondent admits that Respondent filed an intent-to-use application (Serial No. 77/684,044) for "Speech-EZ" on March 5, 2009.

12. Respondent admits the allegations of paragraph 12 of the Petition.

13. Respondent admits the allegations of paragraph 13 of the Petition.

14. In response to paragraph 14 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them.

15. In response to paragraph 15 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them.

16. In response to paragraph 16 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them.

17. In response to paragraph 17 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. Respondent directly denies that "EZ" is merely a novel spelling of "easy". The correct pronunciation of "EZ" is "ease". To get "easy" would require "E-Z".

18. In response to paragraph 18 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground,

denies them. Respondent admits that the pseudo mark “speech easy” was assigned. The assignment of the pseudo mark proves that the trademark examiner directly considered Petitioner’s Mark for goods while granting registration to Respondent’s mark for services.

19. In response to paragraph 19 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. Goods and services are not the same channels of trade. Again, Petitioner attempts to expand alleged rights in a trademark that is only for goods to cover services. Respondent’s mark for “Speech and language pathology therapy services for children diagnosed with childhood apraxia of speech (CAS)” are not in the same channels of trade as Petitioner’s “Speech therapy device; namely, apparatus to ameliorate stuttering using receiver, auditory delay and/or frequency shift circuit, and transmitter; Speech therapy device, namely, apparatus to ameliorate stuttering configured for positioning in or adjacent to the ear” where CAS is not stuttering and stuttering is not CAS. Further, Respondent respectfully submits that the speech therapy devices offered by Petitioner are useless for treating CAS, so patients (consumers) seeking therapy for CAS would not encounter Petitioner’s goods. Likewise, patients seeking help for stuttering would not encounter Respondent’s therapy. Hence, Respondent’s services and Petitioner’s goods are not in the same channels of trade.

20. Respondent denies the allegations of paragraph 20 of the Petition. The fact that some third persons have marks that cover both goods and services is irrelevant. Petitioner asserts no service mark registrations, as shown by Petitioner’s chart on pages 2-4 of the Petition. None of the third party registrations offered by Petitioner mention CAS therapy nor devices for the treatment of stuttering, much less the two together. Further, Respondent respectfully submits that the speech therapy devices offered by Petitioner are useless for treating CAS, so patients (consumers) seeking therapy for CAS would not encounter Petitioner’s goods. Likewise, patients seeking help for

stuttering would not encounter Respondent's therapy. Hence, Respondent's services and Petitioner's goods are not in the same channels of trade.

21. In response to paragraph 21 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. Yet again, Petitioner attempts to expand alleged rights in a trademark registered only for goods to cover services.

22. In response to paragraph 22 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. Petitioner admits using Petitioner's Mark to represent both Petitioner's goods and its licensees' services. Respondent respectfully submits that Petitioner's admitted use of Petitioner's Mark to represent licensees' services constitutes trademark misuse, and is grounds for declaring Petitioner's Mark unenforceable. Respondent respectfully submits that Petitioner's admitted use of Petitioner's Mark to represent the services of others (licensees) has caused Petitioner's Mark to lose its capability to uniquely identify Petitioner as a commercial source, as both the goods of petitioner and the services of the licensees are now represented by Petitioner's Mark. Accordingly, the Board should rule Petitioner's Mark unenforceable or should cancel Petitioner's US registrations, as further counterclaimed below.

23. In response to paragraph 23 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. Here, Petitioner "inextricably" ties its mark for goods to services that Petitioner does not provide and admits that its licensees are using Petitioner's Mark that is for goods only to represent the services of Petitioner's licensees. Respondent respectfully submits that Petitioner's use of Petitioner's Mark to represent licensee's services constitutes trademark misuse, and is grounds for declaring Petitioner's Mark unenforceable. Respondent respectfully submits that Petitioner's

admitted use of Petitioner's Mark to represent the services of others (licensees) has caused Petitioner's Mark to lose its capability to uniquely identify Petitioner as a commercial source, as both the goods of petitioner and the services of the licensees are now represented by Petitioner's Mark. Accordingly, the Board should rule Petitioner's Mark unenforceable or should cancel Petitioner's US registrations. as further counterclaimed below.

24. In response to paragraph 24 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. CAS and stuttering are different maladies, and consumers seeking help for one would not properly encounter services or devices for the other. Respondent respectfully submits that any confusion between Respondent's service mark and Petitioner's Mark for goods is due to Petitioner's actions in misusing its trademark to represent the services of its licensees. Respondent further respectfully submits that, but for that misuse of Petitioner's trademark, there would be no confusion between the source of Petitioner's goods and Respondent's services.

25. Respondent admits the allegations of paragraph 25 of the Petition.

26. Respondent denies the allegations of paragraph 26 of the Petition. Application Serial number 77/684,044 now registered number 3,785, 935, is Respondent's mark, not Petitioner's Mark. Respondent admits that Petitioner received a suspension letter, which speaks for itself. Petitioner omits that, on February 26, 2010, the description of services in Respondent's application was "Speech and language pathology therapy services", which is quite broad. On March 25, 2010, Respondent narrowed its description of services to "Speech and language pathology therapy services for children diagnosed with Childhood Apraxia of Speech (CAS)", which may have been grounds to overcome the suspension. Petitioner did not pursue that approach. The timeline of events is as follows:

| | |
|----------|----------------------------|
| 3/9/2009 | Respondent filed Speech-EZ |
|----------|----------------------------|

| | |
|------------|---|
| 10/4/2009 | Respondent Filed statement of use |
| 11/13/2009 | Petitioner filed fluency coach |
| 2/26/2010 | suspension of fluency coach by examining attorney |
| 3/11/2010 | first letter from Petitioner to Respondent |
| 3/25/2010 | amendment of Speech-EZ description by Respondent |
| 3/25/2010 | response from Respondent to Petitioner's first letter |
| 4/15/2010 | second letter from Petitioner to Respondent |
| 6/4/2010 | cancellation filed by Petitioner |
| 6/7/2010 | suspension of fluency coach requested by Petitioner |
| 6/15/2010 | fluency coach suspended during this cancellation proceeding by examining attorney at Petitioner's request |

27. Respondent admits the allegations of paragraph 27 of the Petition except that Respondent does not admit that the marks are confusingly similar. The letter at Exhibit I speaks for itself.

28. Respondent admits the letter referred to in paragraph 28, which speaks for itself, but denies that the marks are confusingly similar. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence of this paragraph, and on that ground, denies them. Note Petitioner's definition of those likely to be confused as "consuming public", rather than speech therapy professionals. Because Petitioner's goods are only sold to consumers through speech therapy professionals, there is no likelihood of consumer confusion as to origin as the Petitioner's licensees would naturally provide information to avoid such confusion in the normal course of business.

29. In response to paragraph 29 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. Petitioner had an approach to avoiding the suspension based on the narrowing of Respondent's description of services made on March 25, 2010, and did not use it. On June 7, 2010, Petitioner requested suspension based on the present cancellation action, that request was granted June 15, 2010, and so petitioner's application is now suspended at Petitioner's request. Having had

an opportunity to avoid the suspension and having failed to use it, Petitioner has no standing in equity to complain about the suspension. Petitioner can regain the opportunity by withdrawing the present cancellation action, removing the suspension for cancellation, and addressing the original suspension directly. Petitioner's proposition that Respondent's mark may block Petitioner's application is highly speculative, especially in light of the narrowing of Respondent's description of services. Petitioner should have exhausted more economical remedies before filing the Petition.

30. In response to paragraph 30 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. Respondent respectfully submits that misuse of common law rights in trademarks obtains the same results as misuse of rights in registered trademarks. Speech therapy devices offered by Petitioner are useless for treating CAS, so patients (consumers) seeking therapy for CAS would not encounter Petitioner's goods. Likewise, patients seeking help for stuttering would not encounter Respondent's therapy. Hence, Respondent's services and Petitioner's goods are not in the same channels of trade.

31. In response to paragraph 31 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. Petitioner's devices are not completely effective and sometimes lose effectiveness over time (Exhibit 1, section on Effectiveness), while Respondent's therapy services do not suffer from such problems. Even if a hypothetical confused consumer mistook Respondent's therapy as originating from Petitioner, it would likely result in benefit to the Petitioner, not detriment, as Respondent's reputation is better than Petitioner's reputation.

32. In response to paragraph 32 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. Respondent respectfully submits that any confusion between Respondent's service

mark and Petitioner's Mark for goods is due to Petitioner's actions in misusing its trademark to represent the services of its licensees. Respondent further respectfully submits that, but for that misuse of Petitioner's trademark, there could be no issue of confusion between the source of Petitioner's goods and Respondent's services. Petitioner misleads the Board: the mark "SPEECHEASY" without design, logo, or other addition, is NOT found to be registered to Petitioner. Even if a hypothetical confused consumer mistook Respondent's therapy as originating from Petitioner, it would likely result in benefit to the Petitioner, not detriment.

33. In response to paragraph 33 of the Petition, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them. Respondent respectfully submits that marks less than 10 years old are not famous and cannot be diluted.

34. In response to paragraph 34 of the Petition, Respondent denies the allegations. Respondent has never interfered with Petitioner's right to use its mark. Respondent denies that Petitioner has any right to expand use of its mark. Any cloud created was created by Petitioner's misuse and destruction of its own trademarks. As to Petitioner's beliefs, in the following unnumbered paragraph, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that ground, denies them.

AFFIRMATIVE DEFENSES

35. Respondent asserts, as an affirmative defense, that Petitioner's Marks are unenforceable due to trademark misuse (anti-trust basis). By the explicit and implicit representations Petitioner has made in the Petition (¶¶ 6, 19, and 21-23), Petitioner has used its trademarks for goods to represent the services of its licensees, thereby destroying the capacity of the marks to uniquely identify a source of goods, as the marks are now used to represent both the goods of the petitioner and the services of Petitioner's licensees. Where a trademark owner with significant market power (alleged

owner of famous marks, international trade, narrow channels of trade) has extended its trademarks beyond the scope of the rights granted (Petitioner asserts no service marks) and attempts to misuse those overextended rights for an anti-competitive purpose, (as in this cancellation proceeding and letters (cited in Petition) leading up to this proceeding), then the trademark owner has misused its trademarks. Even uncontestable marks are not immune to defense based on anti-trust grounds. (15 USC 1115(b)(7). Accordingly, Respondent prays that the Board rule that Petitioner's misused marks are unenforceable and deny the Petition.

37. Respondent asserts an affirmative defense of unclean hands. Equitable defenses are effective against even incontestable marks. 15 USC 1115(b)(9). By the explicit and implicit representations Petitioner has made in the Petition (¶¶ 6, 19, and 21-23), Petitioner has used its trademarks for goods to represent the services of its licensees as the mark is now used to represent both the goods of the petitioner and the services of Petitioner's licensees. Thus, the Petitioner has clouded the meaning of its own marks. Where the Petitioner has clouded the meaning of its own marks, the Petitioner lacks the clean hands required to complain in equity that Respondent's registration may cloud Petitioner's Marks. Accordingly, Respondent prays that the Board rule that Petitioner lacks the clean hands required for complaining in equity, deny equitable relief, and deny the Petition.

38. Respondent asserts an affirmative defense of estoppel. Equitable defenses are effective against even incontestable marks. 15 USC 1115(b)(9). By the explicit and implicit representations Petitioner has made in the Petition (¶¶ 6, 19, and 21-23), Petitioner has used its trademarks for goods to represent the services of its licensees. Where the Petitioner has destroyed the capacity of Petitioner's Mark to uniquely identify a source of goods, the Petitioner should be estopped from complaining that Respondent's registration may harm Petitioner's Mark. Accordingly, Respondent prays that the Board rule that Petitioner is estopped from complaining in equity, deny equitable relief,

and deny the Petition. Further, where Petitioner gave up a right to challenge the suspension of its pending application, Petitioner should be estopped from making complaints based on the suspension.

39. Respondent asserts, as an affirmative defense, that Petitioner's Marks are unenforceable due to trademark misuse (public policy basis). By the explicit and implicit representations Petitioner has made in the Petition (¶¶ 6, 19, and 21-23), Petitioner has used its trademarks for goods to represent the services of its licensees, thereby incorrectly asserting the rights granted in the registration of the marks, as the marks granted registration for goods are now used to represent both the goods of the petitioner and the services of Petitioner's licensees. Petitioner has made this incorrect assertion for an improper purpose, namely usurping rights it has not been granted and misrepresenting the source of its licensees' services. There is a public policy for limiting the rights in government-granted intellectual property monopolies to those actually granted. Those who exceed the scope of the grant of rights violate public policy, and may be denied the protection of their monopolies for doing so. Accordingly, Respondent prays that the Board rule that Petitioner's misused marks are unenforceable, at least in this action, and deny the Petition.

COUNTERCLAIMS

40. Respondent asserts as a counterclaim that Petitioner's Trademark Registration 2,757,491 be cancelled. Even an uncontestable mark may be cancelled if "the registered mark is being used by or with the permission of the registrant or a person in privity with the registrant, so as to misrepresent the source of the goods or services on or in connection with which the mark is used" 15 USC 1115(b)(3). By the explicit and implicit representations Petitioner has made in the Petition (¶¶ 6, 19, and 21-23), Petitioner has permitted its licensees (who are in privity) to use Petitioner's trademarks (for goods) to represent the services of such licensees, thereby misrepresenting the source of licensees services or the source of Petitioner's goods, as the mark for goods is now used to represent both the goods of the petitioner and the services of Petitioner's licensees. If such misuse were to be

allowed, the notice function of a trademark registration, to both consumers and trademark examining attorneys would, be destroyed. Accordingly, Respondent prays that the Board cancel Petitioner's trademark registration 2,757,491.

41. Respondent asserts as a counterclaim that Petitioner's Trademark Registration 2,730,722 be cancelled. Even an uncontestable mark may be cancelled if "the registered mark is being used by or with the permission of the registrant or a person in privity with the registrant, so as to misrepresent the source of the goods or services on or in connection with which the mark is used" 15 USC 1115(b)(3). By the explicit and implicit representations Petitioner has made in the Petition (§§ 6, 19, and 21-23), Petitioner has permitted its licensees (who are in privity) to use Petitioner's trademarks for goods to represent the services of such licensees, thereby misrepresenting the source of licensees services, as the mark for goods is now used to represent both the goods of the petitioner and the services of Petitioner's licensees. If such misuse were to be allowed, the notice function of a trademark registration, to both consumers and trademark examining attorneys, would be destroyed. Accordingly, Respondent prays that the Board cancel Petitioner's US trademark registration 2,730,722.

42. Respondent asserts as a counterclaim that Petitioner's Trademark Registration 3,005,850 be cancelled. A mark may be cancelled if "the registered mark is being used by or with the permission of the registrant or a person in privity with the registrant, so as to misrepresent the source of the goods or services on or in connection with which the mark is used" 15 USC 1115(b)(3). By the explicit and implicit representations Petitioner has made in the Petition (§§ 6, 19, and 21-23), Petitioner has permitted its licensees (who are in privity) to use Petitioner's trademarks for goods to represent the services of such licensees, thereby misrepresenting the source of licensees' services, as the mark for goods is now used to represent both the goods of the petitioner and the services of Petitioner's licensees. If such misuse were to be allowed, the notice function of a trademark

registration, to both consumers and trademark examining attorneys, would be destroyed.

Accordingly, Respondent prays that the Board cancel Petitioner's US trademark 3,005,850.

43. Respondent asserts as further grounds for the counterclaim that Petitioner's Trademark Registration 3,005,850 be cancelled, that a mark becomes invalid if it fails to uniquely identify a source of goods or services. By the explicit and implicit representations Petitioner has made in the Petition (¶¶ 6, 19, and 21-23), Petitioner has permitted its licensees to use Petitioner's trademarks for goods to represent the services of such licensees, thereby destroying the capacity of the mark to distinguish petitioner's goods from its licensees' services, as the mark for goods is now used to represent both the goods of the petitioner and the services of Petitioner's licensees. If such misuse were to be allowed, the notice function of a trademark registration, to both consumers and trademark examining attorneys, would be destroyed. Accordingly, Respondent prays that the Board cancel Petitioner's US trademark registration 3,005,850.

44. Respondent asserts as a counterclaim that Petitioner's Trademark Registration 3,619,972 be cancelled. A mark may be cancelled if "the registered mark is being used by or with the permission of the registrant or a person in privity with the registrant, so as to misrepresent the source of the goods or services on or in connection with which the mark is used" 15 USC 1115(b)(3). By the explicit and implicit representations Petitioner has made in the Petition (¶¶ 6, 19, and 21-23), Petitioner has permitted its licensees (who are in privity) to use Petitioner's trademarks for goods to represent the services of such licensees, thereby misrepresenting the source of licensees' services, as the mark for goods is now used to represent both the goods of the petitioner and the services of Petitioner's licensees. If such misuse were to be allowed, the notice function of a trademark registration, to both consumers and trademark examining attorneys, would be destroyed. Accordingly, Respondent prays that the Board cancel Petitioner's US trademark 3,619,972.

45. Respondent asserts as further grounds for the counterclaim that Petitioner's Trademark Registration 3,619,972 be cancelled, that a mark becomes invalid if it fails to uniquely identify a source of goods or services. By the explicit and implicit representations Petitioner has made in the Petition, Petitioner has permitted its licensees to use Petitioner's trademarks for goods to represent the services of such licensees, thereby destroying the capacity of the mark to distinguish petitioner's goods from its licensees' services, as the mark for goods is now used to represent both the goods of the petitioner and the services of Petitioner's licensees. If such misuse were to be allowed, the notice function of a trademark registration, to both consumers and trademark examining attorneys would, be destroyed. Accordingly, Respondent prays that the Board cancel Petitioner's US trademark registration 3,619,972.

WHEREFORE, Respondent prays that the Board deny the Petition, and cancel or rule unenforceable all of Petitioner's US trademarks relied on in this proceeding, and for such pleaded equitable relief and for such additional equitable relief as the Board may deem proper.

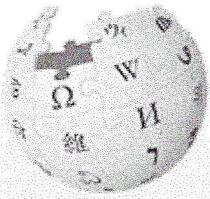
Respectfully submitted,

7/26/2010

/Keith L. Jenkins/

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Attorney for Respondent

EXHIBIT 1



WIKIPEDIA
The Free Encyclopedia

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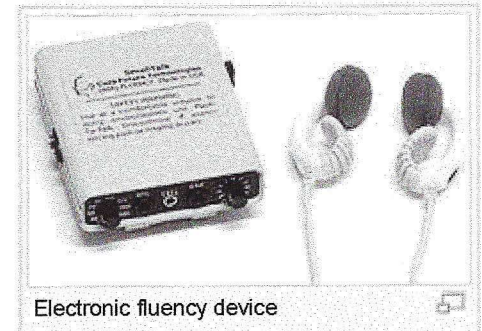
Electronic fluency devices

From Wikipedia, the free encyclopedia

Electronic fluency devices (also known as **assistive devices**, **electronic aids**, **altered auditory feedback devices** and **altered feedback devices**) are electronic devices intended to improve the fluency of persons who stutter. Most electronic fluency devices change the sound of the user's voice in his or her ear.

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 - 3.6 Causes of altered auditory feedback effects
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- External links



Types

[edit]

Electronic fluency devices can be divided into two basic categories.

- Computerized feedback devices provide feedback on the physiological control of respiration and phonation, including loudness, vocal intensity and breathing patterns.^[1]
- Altered auditory feedback (AAF) devices alter the speech signal so that speakers hear their voices differently.^[2]

Computerized feedback devices

[edit]

Computerized feedback devices (such as CAFET or Dr. Fluency) use computer technology to increase control over breathing and phonation. A microphone gathers information about the stutterer's speech and feedback is delivered on a computer screen. Measurements include intensity (loudness), voice quality, breathing patterns, and voicing strategies.^[1] These programs are designed to train features related to prolonged speech, a treatment technique which is frequently used in stuttering therapy. No peer-reviewed studies have been published showing the effectiveness of commercial systems in a clinical context.^[3] A study of electromyographic (EMG) feedback in children and adolescents found it to be as effective as other treatments (home-based and clinic-based smooth speech training) in the short and longterm.^{[4][5]}

Altered auditory feedback devices

[edit]

Altered auditory feedback (AAF) such as singing, choral speaking, masking, delayed or frequency

altered feedback have long been known to reduce stuttering.^{[6][7]} Early altered auditory feedback devices were large and thus confined to the laboratory or therapy room, but advances in electronics have permitted increasingly portable devices such as Derazne Correctophone, the Edinburgh Masker, the Vocaltech Clinical Vocal Feedback Device, the Fluency Master and the SpeechEasy.^[8] Current devices may be similar in size and appearance to a hearing aid, including in-the-ear and completely-in-the-canal models.^{[2][9]}

Masking

[edit]

White noise masking has been well-documented to reduce stuttering.^{[2][10][11]} Clinic-based and portable devices, such as the Edinburgh Masker (since discontinued) have been developed to deliver masking, and found that masking was effective in reducing stuttering,^{[12][13]} though many found that reduction in stuttering faded with time.^[14] Interest in masking reduced during the 1980s as a result of studies finding delayed auditory feedback and frequency altered feedback were more effective in reducing stuttering.^{[2][10]}

Delayed auditory feedback

[edit]

The effect of delayed auditory feedback (DAF) in reducing stuttering has been noted since the 1950s.^{[15][16]} A DAF user hears his or her voice in headphones, delayed a fraction of a second. Typical delays are in the 50 millisecond to 200 millisecond range.^[2] In stutterers, DAF may produce slow, prolonged but fluent speech. In the 1960s to 1980s, DAF was mainly used to train prolongation and fluency. As the stutterer masters fluent speech skills at a slow speaking rate, the delay is reduced in stages, gradually increasing speaking rate, until the person can speak fluently at a normal speaking rate.^{[17][18]} It was not until the 1990s that research began to focus on DAF in isolation. Recent studies have moved from longer delays to shorter delays in the 50 millisecond to 75 millisecond range, and have found that speakers can maintain fast rates and achieve increased fluency at these delays.^{[2][10][19][20]} Delayed auditory feedback presented binaurally (i.e. in both ears) is more effective than that presented in monaurally, or in one ear only.^[21]

Frequency-altered feedback

[edit]

Pitch-shifting frequency-altered auditory feedback (FAF) changes the pitch at which the user hears his or her voice. Varying pitch from quarter, half or full octave shift typically results in 55–74% decreases stuttering in short reading tasks.^{[10][20][22][23]} Individuals differ as to direction and extent of the pitch shift required to maximally reduce stuttering.^[24] In studies that gave longer exposure to FAF and used more meaningful daily life tasks such as generating a monologue, only some participants experienced a reduction in stuttering.^{[25][26]} Initial claims that AAF was more powerful than FAF in reducing stuttering have not been supported by subsequent research.^[2] FAF is, like DAF, more effective when presented binaurally.^[21]

Effectiveness

[edit]

Studies have shown that altered auditory feedback (including delayed auditory feedback, frequency altered feedback) as provided by devices such as the Casa Futura School DAF machine or SpeechEasy can immediately reduce stuttering by 40 to 80 per cent in reading tasks.^{[2][27][28]} Laboratory studies suggest that reductions in stuttering with an electronic fluency device can occur without a reduced speech rate, and that speech naturalness is often enhanced with AAF.^{[9][25]} However, the effects of altered feedback are highly individualistic, with some obtaining considerable increases in fluency, while others receive little or no benefit.^{[2][25][29]}

A 2006 review of stuttering treatments noted that none of the treatment studies on altered auditory feedback met the criteria for experimental quality.^[30] In addition, studies have been critiqued for failing to demonstrate ecological validity; in particular that AAF effects continue over the long term

and in everyday speaking situations.^{[18][8][31]} The high-profile promotion in the media of devices such as the "SpeechEasy" has been criticized as inappropriate given the lack of scientific evidence for their effectiveness.^{[18][31][32]}

There are few published studies on the effect of the AAF in the daily activities of life; studies have mainly examined the effect of AAF on short oral reading tasks, with some studying the giving of a monologue that is usually short in duration.^[2] Several studies have produced group results that stutterers using the SpeechEasy show greater reductions in reading than for monologue and conversation.^{[29][8][33]} Using AAF was effective in reducing stuttering in scripted telephone calls and giving presentations according to two studies.^{[20][22]} Another study examining the effects of the SpeechEasy in more naturalistic situations (conversation and asking questions of strangers outside the clinic) found that the SpeechEasy failed to show a significant effect following 6 months of use, though individual subjects varied in their response.^[8] A further study examining the use of the device during phone and face to face conversation also found wide variations in stuttering reduction, with just under half exhibiting stable improvement over the course of the 4 months of the study.^[33]

While there is evidence of the immediate, short-term effectiveness of AAF devices in reducing stuttering,^{[29][8]} the longterm effects of altered feedback are unclear. There is some limited experimental data that in some speakers the effect of AAF may fade after a few minutes of exposure,^[26] and some anecdotal reports suggest that over time users receive continued but lessened effects from their device.^{[34][35]} While one group study has reported continued overall reductions in stuttering after a year of daily use of the SpeechEasy on reading and a monologue task,^[36] others have found that some participants showed adaptation effects, gaining less benefit from the device after exposure for several months, including stuttering more with the device than without it.^{[8][33]} Some studies of various altered auditory feedback devices have noted carryover fluency, i.e. a reduction in stuttering after the stutterer removes an electronic fluency device,^{[27][37][38][33]} while others have not.^{[9][36]}

The effective of electronic fluency devices as measured by qualitative measures and ratings by stutterers have also been made. Studies show that some stutterers report improved fluency and confidence about speaking, and less severe stuttering and some carryover effects; the device is perceived as being particularly useful on the telephone.^{[8][39][33]} They reported that the device was difficult to use in noisy situations as the device amplifies all voices and sounds,^{[34][8]} and some acclimatization to the use of the device over time.^[8] Qualitative reports of satisfaction may be disassociated from more objective measures of fluency: some stutterers who gain little or no benefit from a device based on objective measures rate the device highly, while others who were obtaining benefit on measures of fluency reported negatives opinions about the device.^{[33][8]}

Use with children

[edit]

There is little experimental evaluation of the therapeutic effect of AAF on children who stutter: one study noted that effects of FAF were less in children than adults.^[40] Given the lack of evidence of its effectiveness, as well as concerns about the impact of altered feedback on developing speech and language systems, some authors have expressed the view that the use of an AAF with children would be unethical.^[2]

Causes of altered auditory feedback effects

[edit]

The precise reasons for the fluency-inducing effects of AAF in stutterers are unknown. Early investigators suggested that those who stutter had an abnormal speech–auditory feedback loop that was corrected or bypassed while speaking under DAF.^[9] Later researchers proposed increased fluency was actually caused by the changes in speech production, including slower speech rates, higher pitches and increased loudness, rather than the AAF per se.^{[41][42]} However, subsequent studies have noted that increased fluency occurred in some stutterers at normal and fast rates using

DAF.^[42]^[43] Some suggest that stuttering is caused by defective auditory processing, and that AAF helps to correct the misperceived rhythmic structure of speech.^[44] It has been shown that some stutterers have noted that have atypical auditory anatomy and that DAF improved fluency in these stutterers but not in those with typical anatomy.^[45] However, positron emission tomography studies on choral reading in stutterers suggest that AAF also made changes in motor and speech production areas of the brain, as well as the auditory processing areas. Choral reading reduced the overactivity in motor areas that is found with stuttered reading, and largely reversed the left-hemisphere based auditory-system and speech production system underactivation.^[46]^[47] Noting that the effects of altered feedback vary from person to person and can wear off over time, distraction has also been proposed has a possible cause of stuttering reduction with AAF.^[48]

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[edit]

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External links

[edit]

- The National Stuttering Association's Position on the Speech Easy and other assistive devices

Categories: Anti-stuttering devices

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