

ESTTA Tracking number: **ESTTA402679**

Filing date: **04/08/2011**

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

Proceeding	92053696
Party	Defendant Zimmer, Inc.
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Date	04/08/2011
Attachments	Answer to the Petition for Cancellation.PDF (6 pages)(44020 bytes)

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

<p>DEPUY, INC.,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ZIMMER, INC.,</p> <p style="text-align: center;">Respondent.</p>	<p>Cancellation No. 92053696</p> <p>Registration No. 3320693 Registered: October 23, 2007 Mark: GENDER SOLUTIONS</p>
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ANSWER TO PETITION FOR CANCELLATION

Respondent Zimmer, Inc. (“Respondent” or “Zimmer”) answers the Petition for Cancellation filed by Petitioner DePuy, Inc. (“Petitioner” or “DePuy”) as follows:

1. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 1 of the Petition for Cancellation, and therefore denies them.
2. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 2 of the Petition for Cancellation, and therefore denies them.
3. Respondent admits that the goods identified in its U.S. Registration No. 3320693 (the “Registration”) are for use in the field of orthopaedics.
4. Respondent admits that it is a Delaware corporation with its principal place of business at 345 Main Street, Warsaw, Indiana 46580.

5. Respondent admits that some of Respondent's and Petitioner's products are competitive; however, Respondent is without knowledge or information sufficient to form a belief as to the truth of whether all of Respondent's and Petitioner's products are competitive, and therefore denies any remaining allegations contained in Paragraph 5 of the Petition for Cancellation.

6. Respondent lacks sufficient information to form a belief as to the truth or falsity of the allegations in Paragraph 6 of the Petition for Cancellation, and therefore denies them.

7. Respondent admits that there is a difference between male and female anatomies with respect to orthopaedic joint implants for knee replacement.

8. Respondent admits that the goods covered by the Registration include a knee implant system designed and marketed for women, which is proportioned to fit a woman's knee anatomy and to accommodate the differences between men and women.

9. Respondent admits that it has disclaimed exclusive use of the word "SOLUTIONS" apart from the mark as a whole in the Registration.

10. Respondent denies the allegations contained in Paragraph 10 of the Petition for Cancellation.

11. Respondent denies the allegations contained in Paragraph 11 of the Petition for Cancellation.

12. Respondent denies the allegations contained in Paragraph 12 of the Petition for Cancellation.

13. Respondent denies the allegations contained in Paragraph 13 of the Petition for Cancellation.

14. Respondent denies the allegations contained in Paragraph 14 of the Petition for Cancellation.

15. Respondent denies the allegations contained in Paragraph 15 of the Petition for Cancellation.

16. Respondent denies the allegations contained in Paragraph 16 of the Petition for Cancellation.

17. Respondent admits that in the Office Action issued on February 1, 2006 in connection with Application No. 78758431, which resulted in the Registration, the Examining Attorney requested Respondent to indicate "whether the wording 'GENDER' and 'GENDER SOLUTIONS' has any significance in the relevant trade, industry, as applied to the goods, any geographical significance, or any meaning in a foreign language." Respondent denies the remaining allegations contained in Paragraph 17 of the Petition for Cancellation.

18. Respondent admits that in its Response to Office Action dated August 2, 2006, Respondent stated that "GENDER SOLUTIONS appearing in the mark has no significance in the relevant trade or industry or as applied to the goods/services listed in the application, no geographical significance, nor any meaning in a foreign language."

19. Respondent denies the allegations contained in Paragraph 19 of the Petition for Cancellation.

20. Respondent denies the allegations contained in Paragraph 20 of the Petition for Cancellation.

21. Respondent denies the allegations contained in Paragraph 21 of the Petition for Cancellation.

22. Respondent denies the allegations contained in Paragraph 22 of the Petition for Cancellation.

23. Respondent denies the allegations contained in Paragraph 23 of the Petition for Cancellation.

FIRST AFFIRMATIVE DEFENSE

1. Petitioner has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Petitioner has not suffered and will not suffer any injury or damage as a result of any conduct of Respondent or the use or registration of Respondent's GENDER SOLUTIONS mark which is the subject of the Registration.

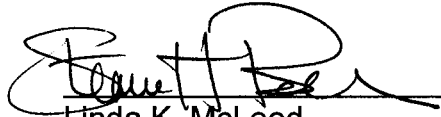
THIRD AFFIRMATIVE DEFENSE

3. The terms GENDER and GENDER SOLUTIONS in Respondent's mark are not merely descriptive. In the event that the Board finds that the terms GENDER and GENDER SOLUTIONS are merely descriptive in connection with Respondent's goods, Respondent claims in the alternative that such terms acquired distinctiveness prior to the October 23, 2007 registration date for Registration No. 3320693.

WHEREFORE, Respondent respectfully requests that Cancellation No. 92053696 be dismissed with prejudice.

Respectfully submitted,

Date: April 8, 2011

A handwritten signature in black ink, appearing to read "Linda K. McLeod", written over a horizontal line.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer to Petition for Cancellation was served on Petitioner's counsel by First-Class United States mail, postage prepaid, this 8th day of April 2011, addressed to:

Joseph D. Lewis, Esq.
He Park-Suk
Barnes & Thornburg LLP
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