

ESTTA Tracking number: **ESTTA399097**

Filing date: **03/21/2011**

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	Caldera International, Inc.		
Entity	Corporation	Citizenship	Oregon
Address	7980 SW Cirrus Drive Beaverton, OR 97008 UNITED STATES		

Attorney information	Parna A. Mehrbani Lane Powell PC 601 SW 2nd Avenue, Suite 2100 Portland, OR 97204 UNITED STATES trademarks@lanepowell.com Phone:(503) 778-2127		
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**Registrations Subject to Cancellation**

Registration No	2940485	Registration date	04/12/2005
Registrant	CALDERA MEDICAL, INC. 2975 East Hillcrest Drive, Suite 403 Thousand Oaks, CA 91362 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 010. First Use: 2003/01/07 First Use In Commerce: 2003/01/07 All goods and services in the class are cancelled, namely: wound retractors, wound and abdominal wall retractors, and wound approximators
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**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)		
Registration No	3149598	Registration date	09/26/2006
Registrant	CALDERA MEDICAL, INC. 28632 Roadside Drive, Suite 260 Agoura Hills, CA 913016099 UNITED STATES		


**Goods/Services Subject to Cancellation**


Class 010. First Use: 2003/03/31 First Use In Commerce: 2003/03/31 All goods and services in the class are cancelled, namely: Medical devices, namely, implantable slings, tissue products, and mesh products for pelvic surgery
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**Grounds for Cancellation**

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

U.S. Registration No.	2548515	Application Date	08/15/2000
Registration Date	03/12/2002	Foreign Priority Date	NONE
Word Mark	CALDERA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Thermal hot and cold therapy wraps and magnetic supportive bandages for first aid, sports related injuries, home health care, pain relief and veterinary purposes		

U.S. Registration No.	3590252	Application Date	04/11/2008
Registration Date	03/17/2009	Foreign Priority Date	NONE
Word Mark	CALDERA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Thermal hot and cold therapy wraps and magnetic supportive bandages; medical compression and support garments in the nature of surgical bras, bra supports, garters, girdles, abdominal binders, back binders, rib belts, shorts, stockings, tights, and leggings		

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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.

Signature	/Parna Mehrbani/
Name	Parna A. Mehrbani
Date	03/21/2011

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

In the Matter of Trademark Registration Nos. 2,940,485 and 3,149,598  
For the Mark CALDERA  
Registered April 12, 2005 and September 26, 2006

Caldera International, Inc.,  Petitioner,  v.  Caldera Medical, Inc.,  Registrant.	<b>PETITION TO CANCEL</b>  Cancellation No. _____
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1. Caldera International, Inc. (“Petitioner”), is an Oregon corporation with its principal place of business at 7980 SW Cirrus Drive, Beaverton, Oregon, 97008.

2. Caldera Medical, Inc. (“Registrant”), obtained a registration on the Principal Register for the mark CALDERA for “wound retractors, wound and abdominal wall retractors, and wound approximators” in International Class 10, registered April 12, 2005, as Registration No. 2,940,485.

3. Registrant obtained a registration on the Principal Register for the mark CALDERA for “medical devices, namely, implantable slings, tissue products, and mesh products for pelvic surgery” in International Class 10, registered September 26, 2006, as Registration No. 3,149,598.

4. The registrations described in paragraphs 2 and 3, above, are collectively referred to herein as the “Registrations.”

5. The records of the U.S. Patent and Trademark Office (“USPTO”) list Registrant as a California corporation with an address of 2975 East Hillcrest Drive, Suite 403, Thousand Oaks, California, 91362.

6. Petitioner believes that it has been and will continue to be damaged by the Registrations, and hereby petitions to cancel the same. The grounds for cancellation are as follows:

7. Petitioner owns Registration No. 2,548,515, on the Principal Register, for the mark CALDERA for use with “thermal hot and cold therapy wraps for first aid, sports related injuries, home health care, and pain relief” in International Class 10 (as amended in its Combined Declaration of Use and Application for Renewal filed on March 21, 2011).

8. Petitioner owns Registration No. 3,590,252, on the Principal Register, for the mark CALDERA for use with “thermal hot and cold therapy wraps and magnetic supportive bandages; medical compression and support garments in the nature of surgical bras, bra supports, garters, girdles, abdominal binders, back binders, rib belts, shorts, stockings, tights, and leggings” in International Class 10.

9. Petitioner has continuously and regularly used its CALDERA mark in connection with therapy wrap, medical compression, and support garment products since at least April 1, 2001.

10. At all times, Petitioner has and does intend to expand its product line in its natural zone of product expansion and natural zone of market channel expansion.

11. Petitioner’s Registration No. 2,548,515 has an earlier filing date than the Registrations; hence, Petitioner’s registration for CALDERA has priority over the Registrations.

12. Petitioner’s Registration Nos. 2,548,515 and 3,590,252 have earlier first use in commerce dates than the Registrations; hence, Petitioner’s use of CALDERA has priority over Registrant’s use of CALDERA.

13. The goods on which Registrant uses its CALDERA mark, as evidenced by the Registrations, are related to the goods on which Petitioner uses its CALDERA mark, as evidenced by Petitioner’s registrations.

14. “Wound retractors, wound and abdominal wall retractors, and wound approximators” and “medical devices, namely, implantable slings, tissue products, and mesh products for pelvic surgery” are related to therapy wrap, medical compression, and support garment products, because, for example and without limitation, they are all used for first aid and/or medical purposes, or they are all products that are likely to be encountered by the same persons under circumstances that would give rise to the mistaken belief that they originate from the same source.

15. Registrant’s CALDERA mark so resembles Petitioner’s CALDERA mark, in fact they are identical, as to be likely to cause confusion, mistake, or deception, when used in connection with related goods, within the meaning of Section 2(d) of the Lanham Trademark Act.

16. Accordingly, Petitioner is being damaged and will continue to be damaged by the Registrations because the Registrations assist and support Registrant in the confusing and misleading use of its mark and gives color of exclusive statutory rights to Registrant in violation and derogation of Petitioner’s prior rights.

17. The USPTO initially refused registration of Registrant’s CALDERA mark (now registered under Registration No. 2,940,485) based on a likelihood of confusion with Petitioner’s Registration No. 2,548,515.

18. Registrant filed a response with the USPTO alleging and representing that its goods would be unlikely to be marketed through the same channels as Petitioner’s goods, nor would they be likely to be encountered by the same set of purchasers.

19. On information and belief, Registrant made these representations solely to obtain registration. Registrant has represented to Petitioner that it is, intends to, and/or will market its products through the same channels as Petitioner’s goods and to the same set of purchasers as Petitioner.

20. On information and belief, Registrant knew of this inaccuracy in its office action response which is now included in its application of record to register the CALDERA mark (now registered under Registration No. 2,940,485).

21. Registrant procured Registration No. 2,940,485 by such written false or fraudulent representations.

WHEREFORE, Petitioner prays that the Registrations be cancelled and that this Petition to Cancel be sustained in favor of Petitioner.

DATED: March 21, 2011

Respectfully Submitted,

LANE POWELL PC

By 

Parna A. Mehrbani, OSB No. 05323

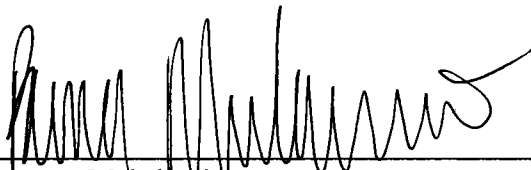
Attorney for Petitioner Caldera International, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing **PETITION TO CANCEL** was served upon attorneys for Registrant:

James W. Inskip  
Jennifer S. Konieczny  
Inskip Intellectual Property Group, Inc.  
2281 West 190th Street, Suite 200  
Torrance, CA 90504

by mailing the same via first class mail on the 21<sup>st</sup> day of March, 2011.

  
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Parha A. Mehrbani