

ESTTA Tracking number: **ESTTA464676**

Filing date: **03/30/2012**

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	The Beauty Wrap, Inc.		
Entity	Corporation	Citizenship	Florida
Address	2333 Feathersound Drive, #B604 Clearwater, FL 33762 UNITED STATES		

Attorney information	Erik M. Pelton Erik M. Pelton & Associates, PLLC PO Box 100637 Arlington, VA 22210 UNITED STATES uspto@tm4smallbiz.com Phone:703-525-8009		
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Registration Subject to Cancellation

Registration No	3271454	Registration date	07/31/2007
Registrants	Wheeler, David Suite 108 8196 Hall Blvd Beaverton, OR 97008 UNITED STATES Kosztolanyi, Nora Suite 108 8196 Hall Blvd Beaverton, OR 97008 UNITED STATES		

Goods/Services Subject to Cancellation

Class 044. First Use: 2006/05/15 First Use In Commerce: 2006/05/15 All goods and services in the class are cancelled, namely: Health spa services, namely, cosmetic body care services

Grounds for Cancellation

Abandonment	Trademark Act section 14
Other	Non-use pursuant to Trademark Act section 1(a)

Attachments	INFINITY SPA - Petition to Cancel - FINAL.pdf (6 pages)(252100 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.

Signature	/ErikMPelton/
Name	Erik M. Pelton
Date	03/30/2012

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

The Beauty Wrap, Inc.
Petitioner,

v.

Nora Kosztolanyi, and
David Wheeler,
Respondents.

Cancellation No. _____

Registration No. 3,271,454

Mark:

Infinity Spa

PETITION FOR CANCELLATION

The Beauty Wrap, Inc. (“Petitioner”), a Florida corporation with its principal place of business at 2333 Feathersound Drive#B604, Clearwater, FL 33762, believes that it is and will be damaged by continued registration of the mark INFINITY SPA in U.S. Registration No. 3,271,454. Petitioner hereby petitions for cancellation of the above-referenced registration pursuant to 15 U.S.C. §§ 1051(a), 1064(3), and 1127. In support of this Petition, Petitioner alleges as follows:

FACTUAL BACKGROUND

1. On April 28, 2011, Petitioner filed U.S. Trademark Application Serial No. 85/306,819 (the “Pending Application”) seeking registration of the standard character mark INFINITY WRAP on the Principal Register for use in connection with “cosmetic body care services; cosmetic body care services in the nature of body wraps” in Class 44.

2. On December 15, 2011, the Trademark Office issued a final refusal of the Pending Application pursuant to Trademark Act §2(d), 15 U.S.C. § 1052(d), on the ground of an alleged likelihood of confusion with the mark INFINITY SPA in Registration No. 3,271,454 (the “Cited Registration”).

3. The INFINITY SPA mark in the Cited Registration is registered to the Principal Register in standard characters (“SPA” disclaimed) for use in connection with “Health spa services, namely, cosmetic body care services” in Class 44.

4. The Cited Registration identifies individuals NoraKosztolanyi and David Wheeler ("Respondents") as the current owners of record, each having the address of Suite 108, 8196 Hall Blvd., Beaverton, OR 97008.

5. Petitioner believes that it is and will be damaged by continued registration of the INFINITY SPA mark in Reg. No. 3,271,454 since the Cited Registration denies Petitioner the opportunity to obtain Federal registration and protection for Petitioner’s INFINITY WRAP mark in connection with the services identified in its Pending Application.

COUNT ONE:
LACK OF BONA FIDE USE IN COMMERCE

6. Petitioner re-alleges and incorporates paragraphs 1-5 above by reference as if set forth fully herein.

7. On January 17, 2007, Respondents filed U.S. Trademark Application Serial No. 77/085,169 for the INFINITY SPA mark based on use in commerce, which matured into the Cited Registration.

8. Respondents included two specimens of use with Application Serial No. 77/085,169, shown in *Table 1* below.

Table 1: Specimens Filed With Application Serial No. 77/085,169



9. On information and belief, Respondents failed to make a *bona fide* use of the INFINITY SPA mark in commerce in the ordinary course of trade in connection with the services identified in the Cited Registration prior to the filing date of Application Serial No. 77/085,169.

10. On information and belief, Respondents failed to make a *bona fide* use of the INFINTIY SPA mark in commerce in the ordinary course of trade in connection with the services identified in the Cited Registration at any time since the filing date of Application Serial No. 77/085,169.

11. On information and belief, Respondents have never made a *bona fide* use of the INFINTIY SPA mark in commerce in the ordinary course of trade in connection with the services identified in the Cited Registration.

12. For these reasons, the Cited Registration is void *ab initio* and should be cancelled for non-use pursuant to Trademark Act § 1(a), 15 U.S.C. § 1051(a).

**COUNT TWO:
ABANDONMENT**

13. Petitioner re-alleges and incorporates paragraphs 1-12 above by reference as if set forthfully herein.

14. On information and belief, Respondents have ceased use of the INFINITY SPA mark in commerce in the ordinary course of trade in connection with the services identified in the Cited Registration.

15. On information and belief, Respondents do not have a *bona fide* intent to resume use of the INFINITY SPA mark in commerce in the ordinary course of trade in connection with the services identified in the Cited Registration.

16. On information and belief, Respondents have abandoned their rights with respect to the INFINITY SPA mark though non-use and lack of intent to resume use.

17. On information and belief, Respondents have ceased *bona fide* commercial use of the INFINITY SPA mark in connection with the services identified in the Cited Registration for a period of the last three consecutive years or more.

18. On information and belief, Respondents' non-use of the INFINITY SPA mark in connection with the Cited Registration for the last three consecutive years constitutes *prima facie* evidence of abandonment.

19. For these reasons, Respondent' s have abandoned the mark in the Cited Registration, and the Cited Registration should be cancelled pursuant to Trademark Act §§ 14(3) and 45, 15 U.S.C. §§ 1064(3) and 1127.

Petitioner hereby appoints Erik M. Pelton, a member of the Bars of the State of New Jersey and the District of Columbia, and Mark L. Donahey, a member of the Bar of the Commonwealth of Virginia, at the firm of:

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to act as attorneys in the matter of the cancellation proceeding identified above, to prosecute said cancellation, to transact all business in the Patent and Trademark Office connected with the cancellation, to sign its name to all papers which are hereinafter to be filed in connection therewith, and to receive all communications relating to the same.

WHEREFORE, Petitioner believes that it is and will be damaged by continued registration of the INFINITY SPAMark in U.S. Registration No. 3,271,454, and, therefore requests that the registration be cancelled on the grounds of non-use and/or abandonment without intent to resume use.

Dated this 30th day of March, 2012.

Respectfully submitted,




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Arlington, Virginia 22210
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the PETITION FOR CANCELATION has been served on the following by delivering said copy on March 30, 2012, via Certified Mail, to Respondents at the following addresses:

NORA KOSZTOLANYI
8196 HALL BLVD.
SUITE 108
BEAVERTON, OR 97008

DAVID WHEELER
8196 HALL BLVD.
SUITE 108
BEAVERTON, OR 97008

By: 

Erik M. Pelton, Esq.