

ESTTA Tracking number: **ESTTA502430**

Filing date: **10/26/2012**

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	Spenco Medical Corporation		
Entity	Corporation	Citizenship	Texas
Address	6301 Imperial Drive Waco, TX 76712 UNITED STATES		

Attorney information	Charles S. Cotropia and Dusan Clark Sidley Austin LLP 717 North Harwood St., Suite 3400 Dallas, TX 75201 UNITED STATES dclark@sidley.com,ccotropia@sidley.com,sboughnou@sidley.com,ipdocketing@sidley.com Phone:214/981-3483		
----------------------	---	--	--

Registration Subject to Cancellation

Registration No	3326538	Registration date	10/30/2007
Registrant	Throneburg, James L. P.O. Box 5399 2210 Newton Drive Statesville, NC 286875399 UNITED STATES		

Goods/Services Subject to Cancellation


Class 025. First Use: 2006/03/01 First Use In Commerce: 2006/03/01 All goods and services in the class are cancelled, namely: MEN'S, WOMEN'S AND CHILDREN'S SOCKS, SHOES AND FOOTWEAR SYSTEMS COMPRISING SOCKS AND SHOES
Class 035. First Use: 2005/06/15 First Use In Commerce: 2005/06/15 All goods and services in the class are cancelled, namely: RETAIL STORE SERVICES AND ON-LINE RETAIL STORE SERVICES VIA THE INTERNET FEATURING MEN'S, WOMEN'S AND CHILDREN'S SOCKS, SHOES AND FOOTWEAR SYSTEMS COMPRISING SOCKS AND SHOES

Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85630533	Application Date	05/21/2012
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	LOVE YOUR FEET
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 010. First use: First Use: 2003/07/01 First Use In Commerce: 2003/07/01 Shoe inserts for medical purposes used for foot support; arch supports for boots and shoes; metatarsal pads for orthopedic purposes</p> <p>Class 025. First use: First Use: 2003/07/01 First Use In Commerce: 2003/07/01 Footwear; insoles; replacement insoles; heel cushions; heel cups</p>

Attachments	Petition for Cancellation.PDF (6 pages)(134707 bytes) 85630533#TMSN.jpeg (1 page)(bytes)
-------------	--

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	/Dusan Clark/
Name	Charles S. Cotropia and Dusan Clark
Date	10/26/2012

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

Spenco Medical Corporation,)
)
Petitioner,)
)
v.) Registration No. 3,326,538
) Cancellation No.: _____
James L. Throneburg,)
)
Registrant.)

PETITION FOR CANCELLATION

Spenco Medical Corporation (“Petitioner”), a corporation organized and existing under the laws of Texas, located and doing business at 6301 Imperial Drive, Waco, Texas 76712, believes that it will be damaged by Registration No. 3,326,538 for the mark THORLOS LOVE YOUR FEET and hereby petitions, in accordance with 37 C.F.R. § 2.111(b), to cancel said registration.

As grounds therefor, it is alleged that:

1. Petitioner has adopted and continuously used the trademark LOVE YOUR FEET since at least as early as July 1, 2003, to the present, in connection with the sale of its goods classified in Classes 10 and 25.

2. Petitioner is the owner of U.S. Trademark Application Ser. No. 85/630,533 for LOVE YOUR FEET, filed on May 21, 2012 covering “shoe inserts for medical purposes used for foot support; arch supports for boots and shoes; metatarsal pads for orthopedic purposes,” in Class 10 and “footwear; insoles; replacement insoles; heel cushions; heel cups,” in Class 25. See Exhibit A, attached hereto.

3. Registration No. 3,326,538, sought to be cancelled, is for the trademark THORLOS LOVE YOUR FEET, registered for use on or in connection with “men's, women's and children's socks, shoes and footwear systems comprising socks and shoes,” in Class 25 and “retail store services and on-line retail store services via the internet featuring men's, women's and children's

socks, shoes and footwear systems comprising socks and shoes,” in Class 35. Such goods and services are closely related, and in some instances identical, to those of Petitioner.

4. Registration No. 3,326,538 was filed on August 10, 2005 and reflects a date of first use of March 1, 2006 for the goods listed in Class 25, and June 15, 2005 for the services listed in Class 35.

5. Petitioner’s use of its LOVE YOUR FEET mark pre-dates both Registrant’s first use of, and application for registration of, THORLOS LOVE YOUR FEET, and establishes the priority of Petitioner’s LOVE YOUR FEET mark.

6. In addition, upon information and belief, Registrant has failed to use THORLOS LOVE YOUR FEET, and is not currently using the designation, as a trademark or service mark designating the source of the goods and services recited in Registration No. 3,326,538.

7. Petitioner has expended considerable effort and expense in promoting its trademark LOVE YOUR FEET and the goods sold under such mark, with the result that the purchasing public has come to know, rely upon, and recognize the products of Petitioner by such mark. Petitioner has established considerable and valuable goodwill in its mark.

8. 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 THORLOS LOVE YOUR FEET on the similar goods/services sold by Petitioner, confusion in trade is likely to result from any concurrent use of Petitioner's mark and that of the Registrant, all to the great detriment of Petitioner.

9. Concurrent use of the marks by the Registrant and Petitioner may result in irreparable damage to Petitioner's reputation and goodwill, if the goods sold and/or services offered by the Registrant are inferior, since purchasers are likely to attribute the source of the Registrant's goods to the Petitioner.

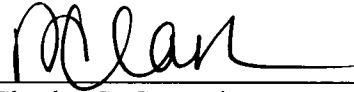
10. If the Registrant is permitted to retain the registration sought to be cancelled, a cloud will be placed on Petitioner's title in and to its trademark, LOVE YOUR FEET, and on its right to

enjoy the free and exclusive use thereof in connection with the sale of its goods, all to the great injury of Petitioner.

WHEREFORE, Petitioner deems that it is or will be damaged by Registration No. 3,326,538, and petitions for cancellation of said registration.

The required cancellation fee is being electronically processed in connection with this Petition for Cancellation. The Director is authorized to debit Sidley Austin LLP Deposit Account No. 181260 for any deficiency in the required fee.

Respectfully submitted:



Charles S. Cotropia
Dusan Clark

SIDLEY AUSTIN LLP
717 North Harwood St., Suite 3400
Dallas, Texas 75201
(214) 981-3300

Attorneys for Petitioner
Spenco Medical Corporation

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being filed electronically through the U.S. Patent and Trademark Office's ESTTA system on October 26, 2012.



Dusan Clark

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

Spenco Medical Corporation,)
)
Petitioner,)
)
v.) Registration No. 3,326,538
) Cancellation No.: _____
James L. Throneburg,)
)
Registrant.)

CERTIFICATE OF SERVICE

This is to certify that the foregoing PETITION FOR CANCELLATION was served on Registrant and counsel for Registrant by depositing true and correct copies in the first class mail, postage pre-paid, addressed as follows:

James L. Throneburg
2210 Newton Drive
P.O. Box 5399
Statesville, North Carolina 28687-5399

Martha Gayle Barber, Esq.
Alston & Bird LLP
Bank of America Plaza
101 South Tryon St., Suite 4000
Charlotte, North Carolina 28280-4000

This 26th day of October, 2012.



Dusan Clark
SIDLEY AUSTIN LLP
717 North Harwood St., Suite 3400
Dallas, Texas 75201
(214) 981-3300

Attorney for Petitioner
Spenco Medical Corporation

Exhibit A



Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Fri Oct 26 05:02:46 EDT 2012

TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICTIONARY SEARCH OIG BOTTOM HELP

Logout Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

TSDR ASSIGN Status TTAB Status (Use the "Back" button of the Internet Browser to return to TESS)

LOVE YOUR FEET

Word Mark LOVE YOUR FEET
Goods and Services IC 010. US 026 039 044. G & S: Shoe inserts for medical purposes used for foot support; arch supports for boots and shoes; metatarsal pads for orthopedic purposes. FIRST USE: 20030701. FIRST USE IN COMMERCE: 20030701
 IC 025. US 022 039. G & S: Footwear; insoles; replacement insoles; heel cushions; heel cups. FIRST USE: 20030701. FIRST USE IN COMMERCE: 20030701

Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85630533

Filing Date May 21, 2012

Current Basis 1A

Original Filing Basis 1A

Owner (APPLICANT) Spenco Medical Corporation CORPORATION TEXAS 6301 Imperial Drive Waco TEXAS 76712

Attorney of Record Dusan Clark

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICTIONARY SEARCH OIG TOP HELP