

ESTTA Tracking number: **ESTTA588625**

Filing date: **02/21/2014**

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	Virginia Commonwealth University		
Entity	state university	Citizenship	Virginia
Address	910 West Franklin Street P.O. Box 842512 Richmond, VA 23284-2512 UNITED STATES		

Attorney information	Noelle M. James Christian & Barton, LLP 909 E. Main Street Suite 1200 Richmond, VA 23219 UNITED STATES pbroadbent@cblaw.com, njames@cblaw.com, bjones@cblaw.com Phone:804-697-4100
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Registration Subject to Cancellation

Registration No	4391070	Registration date	08/27/2013
Registrant	Trimed Services, LLC Suite 111 Mount Pleasant, SC 29466 SEYCHELLES		

Goods/Services Subject to Cancellation


Class 010. First Use: 2011/02/15 First Use In Commerce: 2011/02/15 All goods and services in the class are cancelled, namely: Medical products, namely, thermal therapy system comprised of a compressor and patient compression wrap; and pneumatic compression system comprised of a compressor and patient compression wrap; both of the aforementioned for prevention of deep vein thrombosis
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Grounds for Cancellation

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

U.S. Registration No.	4277996	Application Date	04/14/2011
Registration Date	01/22/2013	Foreign Priority Date	NONE
Word Mark	VCU		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 041. First use: First Use: 1969/01/31 First Use In Commerce: 1969/01/31 educational services and entertainment services, namely, providing courses of instruction at the university level and distributing course materials in connection therewith and organizing and conducting sports and arts competitions and events, excluding educational services relating to the use of virtual care unit models, which are simulated models of hospital environments in which patient simulators may be used for medical training purposes</p> <p>Class 042. First use: First Use: 1969/01/31 First Use In Commerce: 1969/01/31 medical and scientific research, including conducting clinical trials</p> <p>Class 044. First use: First Use: 1969/01/31 First Use In Commerce: 1969/01/31 medical services; medical information; hospitals</p>
Attachments	<p>85294938#TMSN.jpeg(bytes)</p> <p>VCU Petition to Cancel - Trimed.pdf(3077074 bytes)</p>

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	/noelle_m_james/
Name	Noelle M. James
Date	02/21/2014

Cancellation Proceeding Against United States Trademark Registration No. 4,391,070
for VCU VASCULAR COMPRESSION UNIT

Cancellation No.:

1. Upon information and belief, Registrant is the record owner of United States Trademark Registration No. 4,391,070 for the term VCU VASCULAR COMPRESSION UNIT in connection with “Medical products, namely, thermal therapy system comprised of a compressor and patient compression wrap; and pneumatic compression system comprised of a compressor and patient compression wrap; both of the aforementioned for prevention of deep

vein thrombosis” in International Class 10. The application to register VCU VASCULAR COMPRESSION UNIT (S/N 85/764,548) was filed by Registrant on October 26, 2012, and the registration issued on August 27, 2013, with an alleged first use in commerce date of February 15, 2011.

2. Petitioner is the owner of United States Trademark Registration No. 4,277,996 for the mark VCU for “educational services and entertainment services, namely, providing courses of instruction at the university level and distributing course materials in connection therewith and organizing and conducting sports and arts competitions and events, excluding educational services relating to the use of virtual care unit models, which are simulated models of hospital environments in which patient simulators may be used for medical training purposes” in International Class 41, “medical and scientific research, including conducting clinical trials” in International Class 42, and “medical services; medical information; hospitals” in International Class 44 (“VCU Registration”). The application for the VCU Registration was filed by Petitioner on April 14, 2011, and the registration issued on January 22, 2013, with a first use in commerce date of January 31, 1969.

3. Petitioner is also the owner of a family of United States Trademark Registrations and Applications containing “VCU” for various goods and services (including medical services and medical and scientific research), including Registration Nos. 4,374,944 and 4,382,679, and Application Serial Nos. 85/712,168, 86/177,487 and 86/189,719.

4. In January 2013 and March 2013, Registrant assured Petitioner in writing that it was not using the VCU mark in connection with its goods, would not further pursue registration of the VCU VASCULAR COMPRESSION UNIT mark, and would abandon its application to register said mark.

5. Petitioner's use of its VCU mark in connection with its services predates the filing date and the claimed priority date of Registrant's VCU VASCULAR COMPRESSION UNIT mark. Furthermore, Petitioner's filing and registration dates precede Registrant's filing and registration dates, respectively.

6. Notwithstanding the prior filing and registration dates and prior use by and rights of Petitioner, the United States Patent and Trademark Office ("USPTO") has allowed the Registrant's VCU VASCULAR COMPRESSION UNIT mark to register.

7. Petitioner reasonably believes that Registrant's VCU VASCULAR COMPRESSION registration is likely to cause confusion with Petitioner's VCU Registration.

8. The services provided by Petitioner in connection with its use of the VCU mark are in the same line of business and closely related to those services offered by Registrant in connection with its VCU VASCULAR COMPRESSION UNIT mark.

9. The "VCU" mark, in use since 1969 by the Petitioner, is widely known in the healthcare industry and among physicians, prospective patients and customers, in connection with a wide range of health care services originating with the Petitioner or its licensees.

10. Registrant's registration of VCU VASCULAR COMPRESSION UNIT for a medical device is likely to cause confusion as to source, and leads prospective customers, patients and other members of the public to believe that the product originates with or has been approved or licensed by the Petitioner, and dilutes the Petitioner's mark.

11. Registrant has disclaimed "VASCULAR COMPRESSION UNIT", leaving "VCU" as the only distinctive portion of its mark, which is identical to Petitioner's VCU Registration.

12. Petitioner will be damaged by the continued existence of Registrant's VCU VASCULAR COMPRESSION UNIT registration because said mark includes "VCU" as a predominant (and the only distinctive) feature of the mark, which is identical to Petitioner's VCU Registration, and is likely, when applied to the goods of Registrant, to cause confusion, mistake and deception, with consequent irreparable damage to Petitioner's business and goodwill and otherwise will improperly give the appearance of exclusive statutory ownership rights in marks incorporating VCU or variations thereon to Registrant in violation of Section 2(d) of the Trademark Act of 1946 ("Lanham Act"), as amended (15 U.S.C. §1052(d)), in derogation of the prior and superior rights of Petitioner.

13. United States Trademark Registration No. 4,391,070 for the mark VCU VASCULAR COMPRESSION UNIT should, therefore, be cancelled, pursuant to 2(d) of the Lanham Act (15 U.S.C. §1052(d)), on the grounds that the registration so closely resembles Petitioner's VCU Registration so as to cause confusion, mistake or deception.

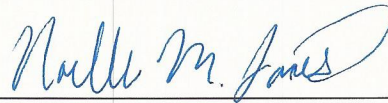
WHEREFORE, Petitioner prays that this Petition for Cancellation be sustained in favor of Petitioner and that the registration owned by Trimed Services, LLC for VCU VASCULAR COMPRESSION UNIT (Reg. No. 4,391,070) be cancelled.

Petitioner will submit payment with the online filing of the Petition, pursuant to 37 CFR § 2.6(a)(16), in an amount totaling three hundred dollars (\$300.00) in payment of the requisite fee for filing this Petition.

Date: February 21, 2014

Respectfully submitted,

VIRGINIA COMMONWEALTH UNIVERSITY



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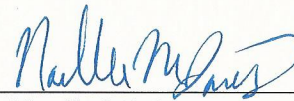
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of February, 2014, a true and correct copy of the Petition for Cancellation was served by first class mail, postage prepaid, on the following:

Registrant at its address on record with the USPTO:

2612 Larch Lane
Suite 111
Mount Pleasant, South Carolina 29466



Noelle M. James