

ESTTA Tracking number: **ESTTA673873**

Filing date: **05/22/2015**

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	Burwell Industries, Inc.		
Entity	Corporation	Citizenship	Colorado
Address	6890 South Emporia Street Centennial, CO 80112 UNITED STATES		

Attorney information	Todd P. Blakely & Pamela N. Hirschman Sheridan Ross P.C. 1560 Broadway, Suite 1200 Denver, CO 80202 UNITED STATES tblakely@sheridanross.com, phirschman@sheridanross.com Phone:303-863-9700		
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Registration Subject to Cancellation

Registration No	4373200	Registration date	07/23/2013
Registrant	Ramirez, Jaime 1820 W Carson Street Torrance, CA 90501 UNITED STATES		

Goods/Services Subject to Cancellation

Class 003. First Use: 2012/01/13 First Use In Commerce: 2013/04/02 All goods and services in the class are cancelled, namely: Nail enamel; Nail polish; Nail polish base coat; Nail polish top coat
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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.	86600246	Application Date	04/16/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DEAD SEXY		

Design Mark	DEAD SEXY
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2008/06/20 First Use In Commerce: 2008/06/20 Hand cream; Lip balm; Perfume Class 004. First use: First Use: 2009/06/16 First Use In Commerce: 2009/06/16 Candles Class 018. First use: First Use: 2011/03/21 First Use In Commerce: 2011/03/21 Cosmetic bags sold empty

Attachments	86600246#TMSN.png(bytes) Petition for Cancellation.pdf(863468 bytes) Exhibit 1.pdf(25543 bytes) Exhibit 2.pdf(26016 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	/Pamela N. Hirschman/
Name	Pamela N. Hirschman
Date	05/22/2015

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

In the Matter of Trademark Registration No. 4,373,200

For the Mark "DEAD SEXY NAILS"

Registered in the U.S. Patent and Trademark Office On: July 23, 2013

Burwell Industries, Inc.)	
)	
Petitioner,)	
)	
v.)	Cancellation No. _____
)	
Jaime Ramirez)	
)	
Registrant.)	

PETITION FOR CANCELLATION

Petitioner, Burwell Industries, Inc., a Colorado corporation, having an address at 6890 S. Emporia St., Centennial Colorado 80112, believes it is damaged and will continue to be damaged by the registration of the mark "DEAD SEXY NAILS" for "nail enamel; nail polish; nail polish base coat; nail polish top coat" in International Class 3 as shown in U.S. Trademark Registration No. 4,373,200 and hereby petitions to cancel the same.

As grounds for this Petition, Petitioner alleges:

1. Petitioner is the owner of U.S. Service Mark Application No. 86/600,246 for "DEAD SEXY" for "perfume; hand cream; lip balm" in International Class 3, "candles" in International Class 4 and "cosmetic bags sold empty" in International Class 18. A photocopy of the TSDR status for the "DEAD SEXY" application is attached at Exhibit 1.
2. Petitioner has used the "DEAD SEXY" trademark in commerce since at least as early as June 20, 2008 in connection with perfume, hand cream and lip balm.

3. Petitioner has used the “DEAD SEXY” trademark in commerce since at least as early as July 2009 in connection with candles.

4. Petitioner has used the “DEAD SEXY” trademark in commerce since at least as early as 2011 in connection with cosmetic bags sold empty.

5. Petitioner is currently using the “DEAD SEXY” trademark in commerce in connection with perfume, hand cream, lip balm, candles and cosmetic bags sold empty.

6. Petitioner has developed substantial goodwill in its “DEAD SEXY” trademark as a result of longstanding use.

7. Upon information and belief, Jaime Ramirez, a U.S. citizen having an address of 1829 W Carson Street, Unit 202-335, Torrance, CA 90501, is the owner of U.S. Trademark Registration No. 4,373,200 for “DEAD SEXY NAILS” for “nail enamel; nail polish; nail polish base coat; nail polish top coat” in International Class 3, the application for this registration being filed on January 13, 2012 on a Section 1(b), intent to use basis. The registration for “DEAD SEXY NAILS” asserts first use and first use in commerce dates of January 13, 2012 and April 2, 2013, respectively for “nail enamel; nail polish; nail polish base coat; nail polish top coat” in International Class 3. A photocopy of the TSDR status for the “DEAD SEXY NAILS” registration is attached at Exhibit 2.

8. As a result of Petitioner’s prior rights in the “DEAD SEXY” trademark, Registrant’s registration of the mark “DEAD SEXY NAILS” in International Class 3 results in a likelihood of confusion, mistake or deception as to the source, origin or affiliation of Registrant’s “nail enamel; nail polish; nail polish base coat; nail polish top coat” in view of the similar nature of the marks, similar nature of the goods, similar nature of the customers, similar nature of the channels of the trade and other factors.

9. The continued registration of U.S. Trademark Registration No. 4,373,200 for “DEAD SEXY NAILS” impairs Petitioner’s rights to register the mark “DEAD SEXY” in International Class 3, and Petitioner is and will continue to be damaged. *See* 15 U.S.C. § 1064.

10. Upon information and belief, Registrant is not currently using the “DEAD SEXY NAILS” trademark in commerce as a designation of source for “nail enamel; nail polish; nail polish base coat; nail polish top coat.”

11. Upon information and belief, Registrant has no intent to use or resume use of the “DEAD SEXY NAILS” trademark in commerce as a designation of source for “nail enamel; nail polish; nail polish base coat; nail polish top coat.”


12. As a result of the allegations in Paragraphs 10 and 11, incorporated by reference herein, U.S. Trademark Registration No. 4,373,200 has been abandoned and is no longer entitled to federal registration. *See* 15 U.S.C. § 1064(3).

WHEREFORE, Petitioner prays that this Petition for Cancellation be sustained and that the registration of U.S. Trademark Registration No. 4,373,200 for “DEAD SEXY NAILS” in International Class 3 be cancelled. The filing fee of \$300.00 is being submitted electronically with this Petition.

Respectfully submitted,
SHERIDAN ROSS, P.C.

Date: _____

5/22/15



Todd P. Blakely, Esq.
Pamela N. Hirschman, Esq.
Attorneys for Petitioner
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Denver, CO 80202-5141
Phone: (303) 863-9700
Fax: (303) 863-0223
tblakely@sheridanross.com
phirschman@sheridanross.com

CERTIFICATE OF SERVICE

I, Brenda Carpenter, do hereby certify that a copy of the foregoing PETITION FOR CANCELLATION was served by first class mail, postage prepaid, on the 22nd day of May 2015, upon Registrant:

Brenda Carpenter

Mr. Jaime Ramirez
1829 W Carson Street
Unit 202-335
Torrance, CA 90501

EXHIBIT 1

Generated on: This page was generated by TSDR on 2015-05-22 13:29:52 EDT

Mark: DEAD SEXY

DEAD SEXY

US Serial Number: 86600246
Application Filing Date: Apr. 16, 2015
Filed as TEAS Plus: Yes
Currently TEAS Plus: Yes
Register: Principal
Mark Type: Trademark
Status: New application will be assigned to an examining attorney approximately 3 months after filing date.
Status Date: Apr. 24, 2015

Mark Information

Mark Literal Elements: DEAD SEXY
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Hand cream; Lip balm; Perfume

International Class(es): 003 - Primary Class

U.S Class(es): 001, 004, 006, 050, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 20, 2008

Use in Commerce: Jun. 20, 2008

For: Candles

International Class(es): 004 - Primary Class

U.S Class(es): 001, 006, 015

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 16, 2009

Use in Commerce: Jun. 16, 2009

For: Cosmetic bags sold empty

International Class(es): 018 - Primary Class

U.S Class(es): 001, 002, 003, 022, 041

Class Status: ACTIVE

Basis: 1(a)

First Use: Mar. 21, 2011

Use in Commerce: Mar. 21, 2011

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Burwell Industries, Inc.
Owner Address: 6890 S. Emporia St
Centennial, COLORADO 80112
UNITED STATES
Legal Entity Type: CORPORATION
State or Country Where: COLORADO

Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Pamela N. Hirschman **Docket Number:** 6395-31
Attorney Primary Email Address: phirschman@sheridanross.com **Attorney Email Authorized:** Yes

Correspondent

Correspondent Name/Address: PAMELA N. HIRSCHMAN
Sheridan Ross P C
1560 Broadway Ste 1200
Denver, COLORADO 80202-5145
UNITED STATES
Phone: 303-863-9700 **Fax:** 303-863-0223
Correspondent e-mail: phirschman@sheridanross.com **Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Apr. 24, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 20, 2015	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: NEW APPLICATION PROCESSING

Date in Location: Apr. 24, 2015

EXHIBIT 2

Generated on: This page was generated by TSDR on 2015-05-22 13:28:20 EDT

Mark: DEAD SEXY NAILS

Dead Sexy Nails

US Serial Number: 85516469
US Registration Number: 4373200
Filed as TEAS Plus: Yes
Register: Principal
Mark Type: Trademark
Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.
Status Date: Jul. 23, 2013
Publication Date: Nov. 20, 2012

Application Filing Date: Jan. 13, 2012
Registration Date: Jul. 23, 2013
Currently TEAS Plus: Yes
Notice of Allowance Date: Jan. 15, 2013

Mark Information

Mark Literal Elements: DEAD SEXY NAILS
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type: 4 - STANDARD CHARACTER MARK
Disclaimer: "NAILS"

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Nail enamel; Nail polish; Nail polish base coat; Nail polish top coat

International Class(es): 003 - Primary Class

U.S Class(es): 001, 004, 006, 050, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 13, 2012

Use in Commerce: Apr. 02, 2013

Basis Information (Case Level)

Filed Use: No	Currently Use: Yes	Amended Use: No
Filed ITU: Yes	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Ramirez, Jaime
Owner Address: 1820 W Carson Street
Unit 202-335
Torrance, CALIFORNIA 90501
UNITED STATES
Legal Entity Type: INDIVIDUAL
Citizenship: UNITED STATES

Attorney/Correspondence Information

Attorney of Record - None
Correspondent

Correspondent Name/Address: JAIME RAMIREZ
1820 W CARSON ST
UNIT 202-335
TORRANCE, CALIFORNIA 90501-2858

UNITED STATES

Correspondent e-mail: pacjam10@gmail.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 23, 2013	REGISTERED-PRINCIPAL REGISTER	
Jun. 15, 2013	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Jun. 14, 2013	LAW OFFICE REGISTRATION REVIEW COMPLETED	69712
Jun. 13, 2013	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
May 07, 2013	STATEMENT OF USE PROCESSING COMPLETE	70565
Apr. 11, 2013	USE AMENDMENT FILED	70565
May 03, 2013	CASE ASSIGNED TO INTENT TO USE PARALEGAL	70565
Apr. 11, 2013	TEAS STATEMENT OF USE RECEIVED	
Apr. 02, 2013	ATTORNEY REVOKED AND/OR APPOINTED	
Apr. 02, 2013	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jan. 15, 2013	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Nov. 20, 2012	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Nov. 20, 2012	PUBLISHED FOR OPPOSITION	
Oct. 31, 2012	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Oct. 18, 2012	LAW OFFICE PUBLICATION REVIEW COMPLETED	69712
Oct. 18, 2012	ASSIGNED TO LIE	69712
Oct. 03, 2012	APPROVED FOR PUB - PRINCIPAL REGISTER	
Oct. 02, 2012	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Oct. 02, 2012	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Oct. 02, 2012	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Oct. 01, 2012	ATTORNEY REVOKED AND/OR APPOINTED	
Oct. 01, 2012	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Apr. 19, 2012	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Apr. 19, 2012	NON-FINAL ACTION E-MAILED	6325
Apr. 19, 2012	NON-FINAL ACTION WRITTEN	69965
Apr. 19, 2012	ASSIGNED TO EXAMINER	69965
Jan. 19, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 17, 2012	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jun. 14, 2013