

ESTTA Tracking number: **ESTTA768318**

Filing date: **09/01/2016**

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	Aero Health Aust Pty Ltd		
Entity	company limited by shares	Citizenship	Australia
Address	63 Seaton Street Armidale, NSW 2350 AUSTRALIA		

Attorney information	Tracy L. Deutmeyer McGrath North Mullin & Kratz, PC LLO 1601 Dodge Street, Suite 3700 Omaha, NE 68102 UNITED STATES trademark@mcgrathnorth.com Phone:402-341-3070		
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### Registration Subject to Cancellation

Registration No	1123566	Registration date	08/07/1979
Registrant	DARBY DENTAL SUPPLY, LLC 300 JERICHO QUADRANGLE JERICHO, NY 11753 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 005. First Use: 1977/12/05 First Use In Commerce: 1977/12/09 All goods and services in the class are cancelled, namely: TWO-PART DENTAL ADHESIVE
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### Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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Related Proceedings	none
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Attachments	SuperBond-Petition-for-Cancellation.pdf(59542 bytes ) Aero-Health-Exhibit-A.pdf(479221 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	/Tracy L. Deutmeyer/
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Name	Tracy L. Deutmeyer
Date	09/01/2016

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

IN THE MATTER OF REGISTRATION NO. 1,123,566  
REGISTERED ON AUGUST 7, 1979

Aero Health Aust Pty Ltd,	)	PROCEEDING NO.: _____
	)	
Plaintiff,	)	
v.	)	
	)	
Darby Dental Supply, LLC,	)	
	)	
Defendant.	)	

**PETITION FOR CANCELLATION**

TO THE COMMISSIONER OF TRADEMARKS:

Plaintiff, Aero Health Aust Pty Ltd, an Australian company limited by shares, with a principal office address of 63 Seaton Street, Armidale, New South Wales 2350, Australia, believes that it will be damaged by registration of the mark shown in U.S. Registration No. 1,123,566 (“the Registration”), in the name of Darby Dental Supply, LLC (“Defendant”), and hereby petitions to cancel the same pursuant to Section 14(3) of the Trademark Act of 1946, as amended. As grounds for cancellation, it is alleged that:

1. Plaintiff is a company limited by shares organized and existing under the laws of Australia, with a principal office address of 63 Seaton Street, Armidale, New South Wales 2350, Australia.
2. Upon information and belief, Defendant is a limited liability company organized and existing under the laws of the State of Delaware with a principal office address of 300 Jericho Quadrangle, Jericho, New York 11753.
3. According to the on-line records of the United States Patent and Trademark Office (“the Office”), Defendant is the owner of record of the Registration for the mark depicted below (“Registered Mark”) for use in connection with a “two-part dental

adhesive” in International Class 5 (the “Registered Goods”) issued on the Principal Register on August 7, 1979 and most recently renewed on July 14, 2009:

# **SUPERBOND**

See the attached Exhibit A, which is a current printout of information from the electronic database records of the Office showing the current status and title of this Reg. No. 1,123,566.

4. By way of a request for extension of protection to the United States under Section 66(a) of the Trademark Act of 1946, namely, U.S. Serial No. 79/183,465 (“the Application”) based on International Registration No. 1289711, Plaintiff seeks to register the

## **SUPA-BOND**

mark for use in connection with the following goods: “[p]lasters, namely, medical plasters, medicated plasters, plasters for medical purposes and anti-rheumatic plasters; bandages; absorbent pads, absorbent swabs and absorbent articles for medical use; adhesive films, patches, strips, tape, bands and bandages for medical use; wipes for medical use, namely, wipes impregnated with medical preparations; medical dressings, namely, wound dressings, burn dressings and materials for dressings; balms, creams, ointments, lotions, sprays and gels for medical use; lubricants for medical use; medical scrubs; antiseptic cleansers and antiseptic body care preparations; disinfectants, namely, disinfectant dressings, disinfectant swabs, disinfectant powder for human application and veterinary use in

first aid and medical field; sanitary preparations for medical purposes; tissues for medical use; topical dermatological products for medical use; filled first aid kits.”

5. By Office Action mailed by the USPTO to the International Bureau on March 2, 2016, the USPTO examining attorney refused registration to the mark in the Application on grounds of a “likelihood of confusion” with the Registered Mark under Section 2(d) of the Trademark Act.
6. Upon information and belief, use of the Registered Mark has been discontinued in connection with the Registered Goods with an intent not to resume such use.
7. As a result of Defendant’s failure to use the Registered Mark with an intent not to resume use, the Registered Mark that is the subject of the Registration has become abandoned for purposes of Section 45 of the Trademark Act.
8. If Defendant is allowed to maintain the Registration herein sought to be cancelled, Plaintiff may be refused registration of its mark that is the subject of the Application, thereby causing damage and injury to Plaintiff. As a result, Plaintiff has standing to file this Petition for Cancellation.

WHEREFORE, Plaintiff respectfully requests that the Cancellation be sustained, and that U.S. Registration No. 1,123,566 be ordered canceled.

Dated: Sept. 1, 2016

RESPECTFULLY SUBMITTED,

Aero Health Aust Pty Ltd, Plaintiff

By /Tracy L. Deutmeyer/  
Tracy L. Deutmeyer (NE #23262)  
McGrath North Mullin & Kratz, PC LLO  
Suite 3700 First National Tower  
1601 Dodge St.  
Omaha, Nebraska 68102  
(402) 341-3070 (phone)  
(402) 952-6870 (fax)

trademark@mcgrathnorth.com  
ATTORNEYS FOR PLAINTIFF

**CERTIFICATION UNDER 37 C.F.R. § 1.8**

I hereby certify that the above and foregoing PETITION FOR CANCELLATION is being filed electronically with the United States Patent and Trademark Office utilizing the *Electronic System for Trademark Trials and Appeals* this 1st day of September, 2016.

/Tracy L. Deutmeyer/  
TRACY L. DEUTMEYER

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing PETITION FOR CANCELLATION was sent via first class mail, postage prepaid, on this 1st day of September, 2016, to the following:

DARBY DENTAL SUPPLY, LLC  
300 JERICHO QUADRANGLE  
JERICHO, NEW YORK 11753

DANIEL I. GOLDBERG  
SALON MARROW DYCKMAN NEWMAN & BROUDY LLP  
292 MADISON AVENUE, 6TH FLOOR  
NEW YORK, NEW YORK 10017

/Tracy L. Deutmeyer/  
TRACY L. DEUTMEYER

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Mark: SUPERBOND

**SUPERBOND**

US Serial Number: 73154014

Application Filing Date: Jan. 03, 1978

US Registration Number: 1123566

Registration Date: Aug. 07, 1979

Register: Principal

Mark Type: Trademark

Status: The registration has been renewed.

Status Date: Jul. 14, 2009

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## Mark Information

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Mark Literal Elements: SUPERBOND

Standard Character Claim: No

Mark Drawing Type: 5 - AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) INSTYLIZED FORM

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## Goods and Services

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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: TWO-PART DENTAL ADHESIVE

International Class(es): 005 - Primary Class

U.S Class(es): 018

Class Status: ACTIVE

Basis: 1(a)

First Use: Dec. 05, 1977

Use in Commerce: Dec. 09, 1977

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## Basis Information (Case Level)

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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

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## Current Owner(s) Information

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Owner Name: DARBY DENTAL SUPPLY, LLC

Owner Address: 300 JERICHO QUADRANGLE  
JERICHO, NEW YORK 11753  
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

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## Attorney/Correspondence Information

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Attorney of Record

EXHIBIT A

**Attorney Name:** Daniel I. Goldberg

**Attorney Primary Email Address:** [DGGoldberg@salonmarrow.com](mailto:DGGoldberg@salonmarrow.com)

**Attorney Email Authorized:** Yes

#### Correspondent

**Correspondent Name/Address:** Daniel I. Goldberg  
Salon Marrow Dyckman Newman & Broudy LLP  
292 Madison Avenue, 6th Floor  
New York, NEW YORK 10017  
UNITED STATES

**Phone:** 212-661-7100

**Fax:** 212-661-3339

**Correspondent e-mail:** [DGGoldberg@salonmarrow.com](mailto:DGGoldberg@salonmarrow.com)

**Correspondent e-mail Authorized:** Yes

#### Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Feb. 24, 2016	ATTORNEY REVOKED AND/OR APPOINTED	
Feb. 24, 2016	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Feb. 23, 2016	WITHDRAWAL OF ATTORNEY GRANTED	
Feb. 23, 2016	TEAS WITHDRAWAL OF ATTORNEY RECEIVED	
Jul. 14, 2009	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	64591
Jul. 14, 2009	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Jul. 09, 2009	ASSIGNED TO PARALEGAL	64591
Jul. 01, 2009	TEAS SECTION 8 & 9 RECEIVED	
Jan. 25, 2008	CASE FILE IN TICRS	
Jan. 24, 2007	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Dec. 02, 1999	AMENDMENT UNDER SECTION 7 - ISSUED	
Oct. 14, 1999	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	
Jul. 20, 1999	SEC 7 REQUEST FILED	
Jul. 20, 1999	REGISTERED - SEC. 9 FILED/CHECK RECORD FOR SEC. 8	
Aug. 07, 1985	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Apr. 29, 1985	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	

## Maintenance Filings or Post Registration Information

**Affidavit of Continued Use:** Section 8 - Accepted

**Affidavit of Incontestability:** Section 15 - Accepted

**Renewal Date:** Aug. 07, 2009

**Change in Registration:** Yes

**Amendment to a Registration/Renewal Certificate:** THE DRAWING IS AMENDED TO APPEAR AS FOLLOWS: PUBLISH NEW CUT

## TM Staff and Location Information

**TM Staff Information - None**

**File Location**

**Current Location:** POST REGISTRATION

**Date in Location:** Jul. 14, 2009

## Assignment Abstract Of Title Information

### Summary

**Total Assignments:** 3

**Registrant:** DARBY DRUG CO., INC.

**Assignment 1 of 3**



**Conveyance:** ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

**Reel/Frame:** [1151/0408](#)

**Pages:** 5

**Date Recorded:** May 16, 1994

**Supporting Documents:** No Supporting Documents Available

**Assignor**

**Name:** [DARBY DRUG CO., INC.](#)

**Execution Date:** May 05, 1994

**Legal Entity Type:** CORPORATION

**State or Country Where Organized:** NEW YORK

**Assignee**

**Name:** [DARBY DENTAL SUPPLY CO., INC.](#)

**State or Country Where Organized:** NEW YORK

**Legal Entity Type:** CORPORATION

**Address:** 100 BANKS AVENUE ROCKVILLE CENTRE, NY 11570

**Correspondent**

**Correspondent Name:** SALON, MARROW & DYCKMAN

**Correspondent Address:** VINCENT J. HANDAL, JR.  
685 THIRD AVENUE  
NEW YORK, NY 10017

**Domestic Representative - Not Found**

**Assignment 2 of 3**

**Conveyance:** ASSIGNS THE ENTIRE INTEREST

**Reel/Frame:** [3222/0961](#)

**Pages:** 5

**Date Recorded:** Jan. 09, 2006

**Supporting Documents:** [assignment-tm-3222-0961.pdf](#)

**Assignor**

**Name:** [DARBY DENTAL SUPPLY CO., INC.](#)

**Execution Date:** Dec. 31, 2005

**Legal Entity Type:** CORPORATION

**State or Country Where Organized:** NEW YORK

**Assignee**

**Name:** [DARBY GROUP COMPANIES, INC.](#)

**State or Country Where Organized:** NEW YORK

**Legal Entity Type:** CORPORATION

**Address:** 300 JERICHO QUADRANGLE  
JERICHO, NEW YORK 11753

**Correspondent**

**Correspondent Name:** VINCENT J. HANDAL, JR.

**Correspondent Address:** 800 CORPORATE DRIVE, SUITE 208  
FORT LAUDERDALE, FL 33334

**Domestic Representative - Not Found**

**Assignment 3 of 3**

**Conveyance:** ASSIGNS THE ENTIRE INTEREST

**Reel/Frame:** [3462/0842](#)

**Pages:** 5

**Date Recorded:** Jan. 17, 2007

**Supporting Documents:** [assignment-tm-3462-0842.pdf](#)

**Assignor**

**Name:** [DARBY GROUP COMPANIES, INC.](#)

**Execution Date:** Jan. 15, 2007

**Legal Entity Type:** CORPORATION

**State or Country Where Organized:** NEW YORK

**Assignee**

**Name:** [DARBY DENTAL SUPPLY, LLC](#)

**Legal Entity Type:** LIMITED LIABILITY COMPANY

**State or Country** DELAWARE  
**Where Organized:**

**Address:** 300 JERICO QUADRANGLE  
JERICO, NEW YORK 11753

**Correspondent**

**Correspondent Name:** VINCENT J. HANDAL, JR.

**Correspondent Address:** 800 CORPORATE DRIVE, SUITE 208  
SALON MARROW ET. AL.  
FORT LAUDERDALE, FL 33334

**Domestic Representative - Not Found**