

ESTTA Tracking number: **ESTTA976052**

Filing date: **05/24/2019**

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 has filed a petition to cancel the registration indicated below.

Petitioner Information

Name	Union Pacific Railroad Employees Health Systems, Inc.		
Entity	Corporation	Citizenship	Utah
Address	1040 North 2200 West, Suite 200 Salt Lake City, UT 84116 UNITED STATES		

Attorney information	Jonathan W. Richards Workman Nydegger 60 E. South Temple #1000 Salt Lake City, UT 84111 UNITED STATES docketing@wnlaw.com, jrichards@wnlaw.com (801) 321-8847		
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Registration Subject to Cancellation

Registration No.	4535991	Registration date	05/27/2014
Registrant	Drug Depot Pharmacy, Inc. 999 N Tustin Ave, Ste 12 Santa Ana, CA 92705 UNITED STATES Email: info@drugdepotpharmacy.com		

Goods/Services Subject to Cancellation

Class 035. First Use: 2011/04/01 First Use In Commerce: 2011/04/01 All goods and services in the class are subject to cancellation, namely: Retail pharmacy services

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	88322740	Application Date	03/01/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DEPOT DRUG		

Design Mark	DEPOT DRUG
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2007/07/09 First Use In Commerce: 2007/07/09 retail pharmacy services; mail order pharmacy services; pharmaceutical services, namely, processing online and telephone prescription orders in retail and central fill pharmacies

Attachments	88322740#TMSN.png(bytes) DRUG DEPOT Cancellation Petition 2019-05-24.pdf(288087 bytes)
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Signature	/jonathanwrichards_29843/
Name	Jonathan W. Richards
Date	05/24/2019

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

In re U.S. Trademark Reg. No. 4,535,991
Registered: May 27, 2014
Mark: DRUG DEPOT

UNION PACIFIC RAILROAD
EMPLOYES HEALTH SYSTEMS, INC.,

Petitioner

v.

Cancellation No. _____

DRUG DEPOT PHARMACY, INC.

Respondent/Registrant

PETITION FOR CANCELLATION

The grounds for this petition for cancellation are as follows:

1. Petitioner, Union Pacific Railroad Employes Health Systems, Inc., is a Utah corporation with a principal place of business at 1040 North 2200 West, Suite 200, Salt Lake City, Utah 84116 (hereinafter referred to as "Petitioner").

2. On information and belief, Respondent/Registrant, Drug Depot Pharmacy, Inc., is a California corporation with a place of business at 999 N. Tustin Avenue, Suite 12, Santa Ana, California 92705-3530 (hereinafter referred to as "Respondent").

3. Respondent is the owner of record of U.S. Trademark Reg. No. 4,535,991 directed to the mark DRUG DEPOT for "retail pharmacy services" in Int'l Class 35, claiming dates of first use of at least as early as April 1, 2011 (hereinafter referred to as the "991 Registration").

4. Petitioner believes that it is being or will be damaged by 991 Registration and hereby petitions to cancel the same.

5. Petitioner is a private healthcare system that services primarily current and former employees of the Union Pacific Railroad. As part of the services it provides, Petitioner provides pharmacy services in interstate commerce to clients and customers located throughout the country under and in association with the name and service mark DEPOT DRUG™. Petitioner began using the DEPOT DRUG™ service mark on and in connection with such services in interstate commerce at least as early as July 9, 2007 and has continuously and extensively used the DEPOT DRUG™ service mark since that time to identify its services.

6. Petitioner has made a significant investment of time, effort and money in promoting its services under and in association with the DEPOT DRUG™ service mark. As a result of such investment, coupled with its extensive and long-standing use, the relevant consuming public has come to identify the DEPOT DRUG™ service mark as a distinctive indicator of origin and to associate the DEPOT DRUG™ service mark exclusively with Petitioner.

7. Petitioner has priority of use of the DEPOT DRUG™ service mark in interstate commerce, and is the senior user, in relation to Respondent and its DRUG DEPOT mark.

8. Petitioner is the owner of record of U.S. Trademark Application Serial No. 88/322,740, which is directed to the word mark DEPOT DRUG for “retail pharmacy services; mail order pharmacy services; pharmaceutical services, namely, processing online and telephone prescription orders in retail and central fill pharmacies” in Int’l Class 35, and claiming dates of first use of the mark at least as early as July 9, 2007 (hereinafter referred to as the “740 Application”).

9. On May 20, 2019, the Examining Attorney assigned to review the 740 Application issued an Office Action refusing registration under Section 2(d) on the grounds that the applied-for mark is considered confusingly similar to the 991 Registration.

10. Petitioner is being damaged by the continued existence of the 991 Registration, in that Petitioner is being denied registration of its DEPOT DRUG™ service mark despite its priority of use in interstate commerce.

WHEREFORE, Petitioner respectfully requests that this cancellation proceeding be sustained in favor of Petitioner, that U.S. Trademark Reg. No. 4,535,991 be cancelled, and that Petitioner be granted such other and further relief to which Petitioner may be entitled.

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan W. Richards". The signature is written in a cursive style with a large initial "J" and "R".

Jonathan W. Richards

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ATTORNEYS FOR PETITIONER