

ESTTA Tracking number: **ESTTA1050378**

Filing date: **04/21/2020**

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	IVitalize, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	3943 Irvine Blvd., Ste. 628 Irvine, CA 92602 UNITED STATES		

Attorney information	James C. Yang Klein, O'Neill & Singh, LLP 16755 Von Karman Ave., Ste. 275 Irvine, CA 92606 UNITED STATES jamesyang@koslaw.com, TM_Docket@koslaw.com 9499551920
----------------------	--

Registration Subject to Cancellation

Registration No.	4992325	Registration date	07/05/2016
Registrant	I-Vitalize, LLC 1395 Brickell Avenue, Suite 1090 Miami, FL 33131 UNITED STATES Email: mguillen@espholding.com		

Goods/Services Subject to Cancellation

Class 044. First Use: 2015/02/27 First Use In Commerce: 2015/02/27 All goods and services in the class are subject to cancellation, namely: Providing vitamin therapy in the nature of IV infusions for rejuvenation and hydration

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
-------------	-----------------------------

Attachments	1844-001-801--20200421-PetitionToCancelAsFiled.pdf(4631153 bytes)
-------------	--

Signature	/James C. Yang/
Name	James C. Yang
Date	04/21/2020

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

<hr/>	:	
IVitalize, Inc.	:	
	:	
Petitioner	:	Cancellation No. _____
	:	
	:	PETITION TO CANCEL
	:	
v.	:	Mark: IVITALIZE THERAPY INFUSE.
	:	REJUVENATE. HYDRATE
	:	
I-Vitalize, LLC	:	Registration No. 4,992,325
	:	
	:	Registration Date: July 5, 2016
Registrant	:	
<hr/>	:	

PETITION TO CANCEL

Petitioner IVitalize, Inc. (“Petitioner”) believes that it has been and will continue to be damaged by the continued registration of certain goods under Registration No. 4992325 (the “’325 Registration”) for the mark IVITALIZE THERAPY INFUSE. REJUVENATE. HYDRATE., and hereby petitions to cancel all of the goods associated with International Class 44 from the ‘325 Registration. As grounds for the petition, Petitioner alleges as follows:

1. Petitioner is a Delaware Corporation, having a place of business at 3943 Irvine Blvd., Ste. 628, Irvine, California 92602, USA.
2. On information and belief, the ‘325 Registration is owned by I-Vitalize, LLC. (“Registrant”). A copy of the ‘325 Registration is attached hereto as Exhibit A.

3. On information and belief, Registrant is a Florida Limited Liability Company having a place of business at 1395 Brickell Avenue, Ste. 1090, Miami, Florida 33131, USA.

4. The '325 Registration is directed to the following goods in International Class 44: "Providing vitamin therapy in the nature of IV infusions for rejuvenation and hydration."

5. The '325 Registration on its face claims that Registrant first used the mark IVITALIZE THERAPY INFUSE. REJUVENATE. HYDRATE. in commerce on February 27, 2015.

6. On information and belief, Registrant has abandoned the trademark rights in its mark.

7. On information and belief, Registrant sold its domain, specifically, ivitalize.com to Petitioner or a third party on or before February 11, 2020. Such sale of the domain name which incorporates Registrant's mark evidences Registrant's intent to abandon Registrant's mark.

8. On information and belief, Registrant's website at ivitalize.com was non-existent for at least three years. The current website at ivitalize.com is the website of Petitioner, not the Registrant.

9. On information and belief, Registrant's Facebook and social media sites have been inactive for more than three years.

10. On information and belief, Registrant's Yelp listing indicates that the business is closed.

11. Petitioner is damaged by the continued registration of the '325 Registration because the continued registration of the '325 Registration would prevent Petitioner from establishing, developing and exercising exclusive control over and goodwill in the Petitioner's mark.

12. Moreover, Petitioner has a bona fide intent to use a substantially similar mark for similar goods, and has filed an intent-to-use application to register the mark, and believes registration of the mark will be refused in view of continued registration of the '325 Registration.

13. Petitioner is unable to develop its business around the mark IVITALIZE for an infusion therapy or treatment due to the uncertain nature of Registrant's trademark rights in its mark. Therefore, the continued registration of the '325 Registration would damage and injure Petitioner.

14. Petitioner's ground for this petition to cancel is that Registrant has abandoned the mark due to nonuse with intent not to resume use.

WHEREFORE, Petitioner requests that Registration No. 4992325 be cancelled.

Date: April 21, 2020

Respectfully submitted,

/James C. Yang/
James C. Yang
KLEIN, O'NEILL & SINGH, LLP
16755 Von Karman Ave., Suite 275
Irvine, CA 92606
Tel: 949-955-1920
Fax: 949-955-1921

Attorney for Petitioner

United States of America

United States Patent and Trademark Office

IVITALIZE
T H E R A P Y

INFUSE. REJUVENATE. HYDRATE.

Reg. No. 4,992,325

I-VITALIZE, LLC (FLORIDA LIMITED LIABILITY COMPANY)
1395 BRICKELL AVENUE, SUITE 1090
MIAMI, FL 33131

Registered July 5, 2016

Int. Cl.: 44

FOR: PROVIDING VITAMIN THERAPY IN THE NATURE OF IV INFUSIONS FOR REJUVENATION AND HYDRATION, IN CLASS 44 (U.S. CLS. 100 AND 101).

SERVICE MARK

FIRST USE 2-27-2015; IN COMMERCE 2-27-2015.

PRINCIPAL REGISTER

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "THERAPY" AND "INFUSE. REJUVENATE. HYDRATE.", APART FROM THE MARK AS SHOWN.

THE COLOR(S) BLUE AND VIOLET IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE WORDING "IVITALIZE" WITH THE LETTERS "I", "V" AND "A" IN LIGHT TO DARK SHADES OF BLUE WITH A BLUE DROP FALLING INTO THE "V" AND OUT OF THE "A" AND THE LETTERS "IT" AND "LIZE" ARE VIOLET. THE WORD "THERAPY" APPEARS IN BLUE UNDERNEATH THE WORD "IVITALIZE" AND THE WORDING "INFUSE. REJUVENATE. HYDRATE." APPEAR UNDERNEATH THAT IN DARK BLUE.

SER. NO. 86-798,895, FILED 10-26-2015.

KAMAL PREET, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* *See* 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.