

ESTTA Tracking number: **ESTTA1214792**

Filing date: **06/10/2022**

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	Point380, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1215 SPRUCE STREET, SUITE 201 BOULDER, CO 80302 UNITED STATES		
Attorney information	EVAN P. EVERIST DORSEY & WHITNEY LLP SUITE 1500, 50 SOUTH SIXTH STREET IP DEPARTMENT MINNEAPOLIS, MN 55402-1498 UNITED STATES Primary email: docketing-dv@dorsey.com Secondary email(s): everist.evan@dorsey.com, lisi.julia@dorsey.com, burtner.jody@dorsey.com 612-492-6819		
Docket no.	M298085		

Registration subject to cancellation

Registration no.	3391032	Registration date	03/04/2008
Register	Principal		
Registrant	PLANT DEVELOPMENT SERVICES, INC. 17325 COUNTY ROAD 68 LOXLEY, AL 36551 UNITED STATES		

Goods/services subject to cancellation

Class 035. First Use: Aug 2004 First Use In Commerce: Aug 2004
All goods and services in the class are subject to cancellation, namely: Advertising and marketing services; business marketing and direct mail consulting services; creative marketing design services

Grounds for cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	Petition for Cancellation- OPTERA CREATIVE.pdf(134702 bytes)
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Signature	/Evan P. Everist/
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Name	Evan P. Everist, MN Bar member
Date	06/10/2022

Trademark Office (“USPTO”). The application was assigned Serial No. 90/667,566 (“the Pending Application”).

2. The Pending Application currently claims the following services: Class 35: *Business consulting in the field of environmental management, namely, advising businesses and individuals on issues of environmental impact, conservation, preservation and protection, and economic analysis for business purposes; Business consulting and advisory services relating to environmental sustainability goals and their integration into business processes and operations; Business consulting service that provides strategies to companies wishing to move towards sustainability and socially responsible business practices; Consulting and advisory services in the area of environmental sustainability, including the evaluation of company operations, finances, infrastructure projects, and service contracts in relation to environmental sustainability, efficiency, and economic impact; Consulting services in the area of sustainable business solutions; Consulting in the area of corporate environmental sustainability strategy; Expert evaluations and reports relating to businesses' greenhouse gas emissions, sustainability objectives, environmental impact, and renewable energy procurement strategy; Preparation of business reports; Providing information in the area of global sustainable business solutions;* Class 42: *Software as a service (SAAS) services featuring databases and software tools for management, tracking, optimization, report generation, forecasting, and analysis of emissions, energy, water, materials and waste management in connection with business operations, manufacturing, construction, logistics, product use and supply chains.*

3. On December 26, 2021, the USPTO issued an Office Action refusing registration of the Pending Application based on alleged likelihood of confusion with the Registration under Trademark Act Section 2(d).

B. The Registration

4. Upon information and belief, and based on the Trademark Status and Document Retrieval System (“TSDR”), Registrant is an Alabama corporation with an address at 17325 County Road 68, Loxley, Alabama 36551.

5. On March 14, 2007, Registrant’s predecessor in interest filed an application with the USPTO to register the mark **OPTERA CREATIVE**, which was assigned Application Serial Number 77/131,205, upon which the Registration is based. The Certificate of Registration for this application issued on the Principal Register on March 4, 2008, for the following services: Class 35: *Advertising and marketing services; business marketing and direct mail consulting services; creative marketing design services.*

6. According to USPTO records, Registrant is the current owner of the Registration.

7. As of the date of this Petition, the Contested Registration subsists on the Principal Register.

C. Grounds for Cancellation

8. Petitioner re-alleges the facts in each of the preceding paragraphs.

9. Upon information and belief, Registrant no longer renders the services identified in the Registration under the **OPTERA CREATIVE** mark in United States commerce.

10. Upon information and belief, Registrant has no bona fide intent to resume use of the **OPTERA CREATIVE** mark in the United States in the ordinary course of business in connection with the services identified in the Registration.

11. Registrant has thus abandoned the **OPTERA CREATIVE** mark for the services identified in the Registration.

12. Because the continued use and registration of the **OPTERA CREATIVE** mark has and may continue to interfere with Petitioner’s exclusive right to use and register its **OPTERA** mark, Petitioner is harmed by the continued registration of the Registration.

13. In light of the Registrant's non-use and abandonment of the mark identified in the Contested Registration, Registrant is not entitled to continued registration of the **OPTERA CREATIVE** mark pursuant to 15 U.S.C. § 1064(3), and the Registration should be canceled.

WHEREFORE, Petitioner respectfully requests that Registration No. 3,391,032 be canceled, and that judgment be entered in favor of Petitioner.

Respectfully submitted,

POINT380, INC.



Dated: June 10, 2022

By: _____
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