

ESTTA Tracking number: **ESTTA1338153**
Filing date: **02/05/2024**

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	Osteoremedies, LLC		
Entity	Limited Liability Company	Incorporated or registered in	Delaware
Address	6800 POPLAR AVENUE SUITE 120 MEMPHIS, TN 38138 UNITED STATES		

Attorney information	MARK H. TIDMAN BAKER & HOSTETLER LLP 1050 CONNECTICUT AVE, NW WASHINGTON SQUARE, SUITE 1100 WASHINGTON, DC 20036-2403 UNITED STATES Primary email: bhipdocket@bakerlaw.com Secondary email(s): mtidman@bakerlaw.com, mmischler@bakerlaw.com, ahsu@bakerlaw.com, visiondocket@bakerlaw.com 202-861-1500		
Docket no.	48810.020047		

Registration subject to cancellation

Registration no.	6149526	Registration date	09/08/2020
Register	Principal		
Registrant	Bone Health Technologies, Inc. 101 MISSISSIPPI ST. SAN FRANCISCO, CA 94107 UNITED STATES		

Goods/services subject to cancellation

Class 010. First Use: Apr 15, 2020 First Use In Commerce: May 5, 2020
All goods and services in the class are subject to cancellation, namely: Medical apparatus, namely, consumer-worn motorized, vibrating devices used for preventing osteoporosis

Grounds for cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
--------------------------------------	---------------------------------------

Mark cited by petitioner as basis for cancellation

U.S. registration	5069376	Application date	02/16/2015
-------------------	---------	------------------	------------

no.			
Register	Principal		
Registration date	10/25/2016	Foreign priority date	NONE
Word mark	OSTEOBOOST		
Design mark			
Description of mark	NONE		
Goods/services	Class 010. First use: First Use: Aug 15, 2016 First Use In Commerce: Aug 15, 2016 bone void fillers consisting primarily of synthetic materials and also incorporating natural materials		

Attachments	6149526_240205_Petition for Cancellation.pdf(184374 bytes)
-------------	---

Signature	/Mark H. Tidman/
Name	Mark H. Tidman
Date	02/05/2024

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

OSTEOREMEDIES, LLC,

Petitioner,

v.

BONE HEALTH TECHNOLOGIES, INC.,

Registrant.

Reg. No.: 6149526

Registered: September 8, 2020

Mark: OSTEOBOOST

Cancellation No. _____

PETITION FOR CANCELLATION

Petitioner Osteoremedies, LLC (“Petitioner”), a Delaware limited liability company with a principal place of business at 6800 Poplar Avenue, Suite 120, Memphis, TN 38138, believes that it is being damaged by the continued registration of Registration No. 6149526 for the mark OSTEOBOOST, registered on the Principal Register on September 8, 2020 for “Medical apparatus, namely, consumer-worn motorized, vibrating devices used for preventing osteoporosis” in Class 10 by Bone Health Technologies, Inc. (“Registrant”), a Delaware corporation with a principal place of business at 101 Mississippi St., San Francisco, CA 94107, and hereby petitions to cancel same.

As grounds for cancellation, it is alleged that:

1. Petitioner is the owner of common law rights and federal trademark Registration Number 5069376 for the OSTEOBOOST mark in connection with “bone void fillers consisting primarily of synthetic materials and also incorporating natural materials” in Class 10 (the “OSTEOBOOST Mark”).

2. A printout of the Certificate of Registration and TSDR status page for the OSTEOBOOST Mark is attached hereto as **Exhibit A**.

3. Petitioner has used at common law and in interstate commerce its OSTEOBOOST Mark in connection with the designated goods since at least as early as August of 2016.

4. Petitioner's federal registration is valid and incontestable.

5. Petitioner's federal registration provides prima facie evidence of Petitioner's ownership of the OSTEOBOOST Mark and of its exclusive right to use the mark in commerce.

6. The OSTEOBOOST Mark is well known for bone void fillers, and has been in use for almost 8 years.

7. Petitioner has a large and loyal following of customers, owing to its established reputation for its OSTEOBOOST brand.

8. Petitioner has spent substantial money in advertising and promoting its OSTEOBOOST bone void fillers.

9. Petitioner uses and promotes the OSTEOBOOST Mark in such a way that the public associates the OSTEOBOOST Mark exclusively with Petitioner and Petitioner's OSTEOBOOST brand.

10. Upon information and belief, Registrant is the owner of Registration No. 6149526 for the identical mark OSTEOBOOST for "Medical apparatus, namely, consumer-worn motorized, vibrating devices used for preventing osteoporosis" in Class 10, filed on December 6, 2019, and registered on September 8, 2020.

11. Petitioner has been using its OSTEOBOOST Mark in U.S. commerce long prior to Registrant's application filing date and its alleged first use in commerce date of April 15, 2020.

12. Petitioner's OSTEOBOOST Mark has priority to Registrant's OSTEOBOOST mark.

13. Registrant knew or had reason to know of Petitioner's OSTEOBOOST Mark when it sought registration of OSTEOBOOST.

14. Petitioner sells its OSTEOBOOST products in interstate commerce through various channels, including to distributors online at <https://osteoremedies.com/osteoboost/>.

15. Registrant plans to sell its OSTEOBOOST products in interstate commerce through online channels, including at <https://www.bonehealthtech.com/#osteoboost>.

**CANCELLATION OF MARK UNDER SECTION 2(D)
OF THE LANHAM ACT**

16. Petitioner realleges and incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

17. Registrant's registration for OSTEOBOOST should be cancelled pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. §1052, on the grounds that Registrant's OSTEOBOOST designation so closely resembles Petitioner's prior OSTEOBOOST Mark that, when used in connection with confusingly similar bone-related items covered by Registrant's registration, is likely to cause confusion, to cause mistake, or to deceive, with consequent injury to Petitioner, the trade, and the public.

18. Registration of Registrant's OSTEOBOOST mark on the Principal Register would be inconsistent with Petitioner's prior rights in its distinctive and incontestable OSTEOBOOST Mark.

19. Registrant is not affiliated or connected with or endorsed or sponsored by Petitioner, nor has Petitioner approved any of the goods offered by Registrant under OSTEOBOOST.

20. Confusion, mistake, deception, and damage to Petitioner's goodwill and reputation symbolized by the OSTEOBOOST Mark will continue unless Registrant's trademark registration is cancelled.

WHEREFORE, Petitioner Osteoremedies, LLC requests that Registration No. 6149526 be cancelled in its entirety and judgment be entered for Petitioner.

Date: February 5, 2024

Respectfully submitted,

BAKER & HOSTETLER LLP

By: /s/ Mark H. Tidman
Mark H. Tidman
Washington Square, Suite 1100
1050 Connecticut Avenue, NW
Washington, DC 20036
Telephone: (202) 861-1670
mtidman@bakerlaw.com

Attorney for Petitioner Osteoremedies, LLC

CERTIFICATE OF FILING

I hereby certify that on February 5, 2024, a true and correct copy of the foregoing
PETITION FOR CANCELLATION has been filed electronically using ESTTA.

/Mark H. Tidman/ _____
Mark H. Tidman

EXHIBIT A

Generated on: This page was generated by TSDR on 2024-01-31 15:04:13 EST

Mark: OSTEOBOOST

OSTEOBOOST

US Serial Number: 86536527

Application Filing Date: Feb. 16, 2015

US Registration Number: 5069376

Registration Date: Oct. 25, 2016

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Status Date: Apr. 07, 2022

Publication Date: Jul. 21, 2015 Notice of Allowance Date: Sep. 15, 2015

Mark Information

Mark Literal Elements: OSTEOBOOST

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: bone void fillers consisting primarily of synthetic materials and also incorporating natural materials

International Class(es): 010 - Primary Class

U.S Class(es): 026, 039, 044

Class Status: ACTIVE

Basis: 1(a)

First Use: Aug. 15, 2016

Use in Commerce: Aug. 15, 2016

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Filed ITU: Yes

Currently ITU: No

Filed 44D: No

Currently 44D: No

Filed 44E: No

Currently 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: Osteoremedies, LLC

Owner Address: 6800 Poplar Avenue, Suite 120
Memphis, TENNESSEE UNITED STATES 38138

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Mark H. Tidman

Docket Number: 48810.020004

Attorney Primary Email Address: bhipdocket@bakerlaw.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Mark H. Tidman
BAKER & HOSTETLER LLP
1050 Connecticut Avenue, NW
Washington Square, Suite 1100
Washington, DISTRICT OF COLUMBIA UNITED STATES 20036-5304

Phone: 202-861-1500

Fax: 202-861-1783

Correspondent e-mail: mtidman@bakerlaw.com ahsu@bakerlaw.com bhi@docket@bakerlaw.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Apr. 07, 2022	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Apr. 07, 2022	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Apr. 07, 2022	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	
Oct. 26, 2021	TEAS SECTION 8 & 15 RECEIVED	
Oct. 25, 2021	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
Dec. 11, 2020	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	
Dec. 11, 2020	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Dec. 11, 2020	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Dec. 11, 2020	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Dec. 11, 2020	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Oct. 25, 2016	REGISTERED-PRINCIPAL REGISTER	
Sep. 21, 2016	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Sep. 20, 2016	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Aug. 30, 2016	STATEMENT OF USE PROCESSING COMPLETE	
Aug. 16, 2016	USE AMENDMENT FILED	
Aug. 16, 2016	TEAS STATEMENT OF USE RECEIVED	
Apr. 19, 2016	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Apr. 18, 2016	SOU EXTENSION 1 GRANTED	
Mar. 10, 2016	SOU EXTENSION 1 FILED	
Apr. 14, 2016	CASE ASSIGNED TO INTENT TO USE PARALEGAL	
Mar. 10, 2016	SOU TEAS EXTENSION RECEIVED	
Sep. 15, 2015	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Jul. 21, 2015	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 21, 2015	PUBLISHED FOR OPPOSITION	
Jul. 01, 2015	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
May 28, 2015	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 21, 2015	ASSIGNED TO EXAMINER	
Mar. 05, 2015	NOTICE OF PSEUDO MARK E-MAILED	
Mar. 04, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMO LAW OFFICE 118

Date in Location: Apr. 07, 2022