

ESTTA Tracking number: **ESTTA590900**Filing date: **03/05/2014**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	Sunstar Americas, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	4635 W. Foster Avenue Chicago, IL 60630 UNITED STATES		

Attorney information	Charles A. Laff and Larry L. Saret Michael Best & Friedrich LLP 180 N. Stetson Avenue, Suite 2000 Chicago, IL 60601 UNITED STATES chiipdocket@michaelbest.com, calaff@michaelbest.com, llsaret@michaelbest.com, prcoble@michaelbest.com, geespinoza@michaelbest.com Phone:312-222-0800
----------------------	---

Registration Subject to Cancellation

Registration No	3593027	Registration date	03/17/2009
Registrant	DR. FRESH, LLC 6645 CABALLERO BOULEVARD BUENA PARK, CA 90620 GERMANY		

Goods/Services Subject to Cancellation

Class 021. First Use: 2008/01/16 First Use In Commerce: 2008/01/16 All goods and services in the class are cancelled, namely: toothbrushes

Grounds for Cancellation

The mark comprises matter that, as a whole, is functional	Trademark Act section 2(e)(5)
Genericness	Trademark Act section 23
Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	hard-to-reach areas, for hard-to-reach areas and similar variations of		

	those phrases
Goods/Services	toothbrushes and other oral healthcare products that may be particularly suited for cleaning difficult areas in the mouth

Attachments	14641247_Petition_For_Cancellation_14641152_1.pdf(18265 bytes) 14641030_Exhibit_A.pdf(122923 bytes) 14641026_Exhibit_B.pdf(1914118 bytes)
-------------	--

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	/larry l. saret/
Name	Larry L. Saret
Date	03/05/2014

CERTIFICATE OF TRANSMISSION

I hereby certify that this Petition for Cancellation is being transmitted by the Electronic System for Trademark Trials and Appeals to the United States Patent and Trademark Office on March 4, 2014.

/s/ Dawn S. Ternig
Dawn S. Ternig

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

In the Matter of Registration No. 3593027
Issued: March 17, 2009
Mark: HARD TO REACH PLACES

SUNSTAR AMERICAS, INC.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No.
)	
DR. FRESH, LLC,)	
)	
Respondent.)	

PETITION FOR CANCELLATION

This petition relates to the registration of the trademark HARD TO REACH PLACES for toothbrushes, Registration No. 3593027 ("Respondent's Mark") issued March 17, 2009, to Johnson & Johnson and later assigned to Dr. Fresh LLC, 6645 Caballero Boulevard, Buena Park, CA 90620 ("Respondent"). Sunstar Americas, Inc., a Delaware corporation with its principal place of business at 4635 West Foster Avenue, Chicago, Illinois 60630 ("Petitioner"), believes it is being damaged and will continue to be damaged by such registration and hereby petitions for the cancellation of the registration of Respondent's Mark.

The grounds for cancellation are as follows:

1. Respondent and Petitioner sell oral health care products, such as toothbrushes, to oral health care professionals and consumers.

2. Toothbrushes are designed to clean small spaces between and around teeth and gums in the mouth. Many such spaces can be difficult or awkward to access with toothbrushes or other oral healthcare products. Toothbrushes that can better clean difficult to access areas are more effective in promoting oral health.

3. Respondent has asserted that Petitioner's uses of phrases such as "Hard-to-Reach Areas," "For hard-to-reach areas," and similar variations of those phrases infringe Respondent's Mark.

4. Petitioner and others use the phrases "Hard-to-Reach Areas," "For hard-to-reach areas," and similar variations of those phrases in advertising and on packaging not as a trademark and merely to describe certain toothbrushes and other oral healthcare products that may be particularly suited for cleaning difficult to access areas in the mouth.

5. As a result of the above facts, there is no likelihood of confusion between Respondent's Mark and Petitioner's use of phrases such as "Hard-to-Reach Areas," "For hard-to-reach areas," and similar variations of those phrases.

6. The phrase HARD TO REACH PLACES is used by Respondent to merely describe a characteristic or quality of toothbrushes and comprises matter that is functional.

7. The phrase "hard to reach places" does not identify Respondent's toothbrushes or distinguish Respondent's toothbrushes from the toothbrushes of others.

8. HARD TO REACH PLACES has not become distinctive of

Respondent's toothbrushes.

9. HARD TO REACH PLACES is a generic phrase used in connection with toothbrushes, is merely descriptive or misdescriptive of toothbrushes, or is functional.

10. Accordingly, Respondent's Mark is invalid.

11. Respondent's Mark is inconsistent and interferes with Petitioner's right to use "Hard-to-Reach Areas," "for hard-to-reach areas," or variations of those phrases, in connection with the sale of toothbrushes, to fairly describe Petitioner's toothbrushes and their functions, features and characteristics.

12. Registration No. 3593027 identifies January 16, 2008, as the date of first use in commerce of Respondent's Mark. A printout from TESS setting forth the asserted date of first use of Respondent's Mark is attached as Exhibit A.

13. Petitioner has used the phrases "Hard-to-Reach Areas," "For hard-to-reach areas," and slight variations of those phrases in connection with Petitioner's toothbrushes dating back to at least as early as 1987. Petitioner has continuously used such phrases in connection with the sale of toothbrushes and other oral healthcare products for at least the past 25 years, long before Respondent's alleged date of first use.

14. If Respondent's Mark is determined not to be generic, merely descriptive, or functional, and it is also determined that there is a likelihood of confusion between Respondent's Mark and Petitioner's use of the phrases "Hard-to-Reach Areas," "For hard-to-reach areas," and variations of those phrases, Petitioner has priority over Respondent to use those phrases.



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.