

ESTTA Tracking number: **ESTTA1037581**

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

Proceeding	92073190
Party	Defendant Barbara J. Swaab
Correspondence Address	BARBARA J SWAAB 3850 LAKEVIEW BLVD ORCHARD LAKE, MI 48324 UNITED STATES no email provided no phone number provided
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Arnold S. Weintraub
Filer's email	ipdocket@weintraubgroup.com
Signature	/Arnold S. Weintraub/
Date	02/21/2020
Attachments	20200221 Motion and Brief For Filing.pdf(572471 bytes ) 20200221 Exhibits to Motion and Brief For Filing.pdf(2705593 bytes )



It will be established hereinafter that Respondent has never abandoned the mark, “Take a Deep Breath,” nor has any intention of so doing.

Accordingly, Respondent, BARBARA J. SWAAB, requests that Petitioner’s Petition for Cancellation be dismissed for failure to state a cause of action upon which relief can be granted and that Respondent’s Motion for Summary Disposition be granted.

Concurrence in this Motion was sought on February 18, 2020, by e-mail to Petitioner’s counsel, Ms. Patchen Haggery but such concurrence was not given.

Dated: February 21, 2020

/Arnold S. Weintraub/  
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<u>Exhibit</u>	<u>Description</u>
Exhibit A	Articles about Petitioner, Calm.com, Inc.
Exhibit B	Petitioner's Intent to Use Trademark Application
Exhibit C	Third-Party Registration for "Take a Deep Breath"
Exhibit D	Respondent's Registration No. 2,553,590 for "Take a Deep Breath"
Exhibit E	Affidavit of Respondent, Barbara J. Swaab (w attached Ex. 1, 2 & 3)
Exhibit F	Receipts from InMotion Hosting
Exhibit G	Screenshots from Way Back Machine Website

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