

ESTTA Tracking number: **ESTTA1037581**

Filing date: **02/21/2020**

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
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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)

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

In Re Registration No. 2,553,590
For the Mark: TAKE A DEEP BREATH
Registered on March 14, 2002

CALM.COM, INC.,

Petitioner,

vs.

BARBARA J. SWAAB,

Respondent.

Cancellation No.: 92073190

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**RESPONDENT'S COMBINED MOTION TO DISMISS PURSUANT TO FRCP §12(b)(6)
AND MOTION FOR SUMMARY DISPOSITION PURSUANT TO FRCP §56**

BARBARA J. SWAAB, by and through her Attorneys, ARNOLD S. WEINTRAUB and
THE WEINTRAUB GROUP, P.L.C., brings this Combined Motion to Dismiss Pursuant to
FRCP §12(b)(6) and Motion for Summary Disposition pursuant to FRCP §56.

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

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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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