

ESTTA Tracking number: **ESTTA252871**

Filing date: **12/04/2008**

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	CHERUBS - The Association of Congenital Diaphragmatic Hernia Research, Advocacy and Support		
Entity	Non-Profit Organization	Citizenship	North Carolina
Address	3650 Rogers Rd. #290 Wake Forest, NC 27587 UNITED STATES		

Correspondence information	Dawn M. Torrence Williamson President & Founder CHERUBS - The Association of Congenital Diaphragmatic Hernia Research, Advocacy and Support 3650 Rogers Rd. #290 Wake Forest, NC 27587 UNITED STATES dawn.williamson@cherubs-cdh.org Phone:919-610-0129
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Registration Subject to Cancellation

Registration No	3503325	Registration date	09/16/2008
Registrant	Breath of Hope, Incorporated PO Box 6627 53 Four Seasons Drive Charlottesville, VA 22906 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2007/07/01 First Use In Commerce: 2007/07/01 All goods and services in the class are cancelled, namely: Promoting public awareness of congenital diaphragmatic hernia; Public advocacy to promote awareness of congenital diaphragmatic hernia

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Genericness	Trademark Act section 23

Attachments	PetitiontoCancel3503325.pdf (3 pages)(89905 bytes) CertificateofMailing3503325.pdf (1 page)(76688 bytes)
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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	/Dawn M. Torrence Williamson/
Name	Dawn M. Torrence Williamson
Date	12/04/2008

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

CHERUBS - THE ASSOCIATION OF
CONGENITAL DIAPHRAGMATIC HERNIA
RESEARCH, ADVOCACY AND SUPPORT

Petitioner,

v.

BREATH OF HOPE, INC.

Respondent.

PETITION TO CANCEL

Mark: CONGENITAL DIAPHRAGMATIC
HERNIA AWARENESS

Reg. No. 3,503,325

Reg. Date: September 17, 2008

PETITION TO CANCEL

CHERUBS - The Association of Congenital Diaphragmatic Hernia Research, Advocacy and Support, also known as CHERUBS - The Association of Congenital Diaphragmatic Hernia Research, Awareness and Support, having its place of business at 3650 Rogers Rd. #290, NC 27587, has been and believes it will continue to be damaged by the continued registration of the mark shown in United States Trademark Registration 3,503,325 and hereby seeks cancellation of this registration.

As grounds for the cancellation, CHERUBS - The Association of Congenital Diaphragmatic Hernia Research, Advocacy and Support, alleges:

1. DESCRIPTION OF REGISTRANT'S REGISTRATION No. 3,503,325: Filed on April 1, 2008 by Breath of Hope, Inc. the mark CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS "Promoting public awareness of congenital diaphragmatic hernia; Public advocacy to promote awareness of congenital diaphragmatic hernia", claiming first use in commerce on 07/01/2007. Registered on September 17, 2008 on the Supplemental Register.
2. FRAUD BY BREATH OF HOPE, INC.: Breath of Hope, Inc., filed an application for the registration of the mark CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS on April 1, 2008.
3. Breath of Hope, Inc., stated in its application that it first used CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS in commerce at least as early as July 1, 2007.
4. Upon information and belief, Breath of Hope, Inc., did not first use CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS in commerce as early as July 1, 2007.
5. Upon information and belief, Breath of Hope, Inc., did not use CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS in its newsletter published in July 2007.
6. Upon information and belief, Breath of Hope, Inc., used the "TM" symbol on its Web site in conjunction with CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS DAY and not with the mark as shown in the application.

7. Upon information and belief, prior to October 22, 2007, Breath of Hope, Inc., used the “TM” symbol in conjunction with CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS DAY and not CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS on its graphics.
8. Upon information and belief, prior to October 22, 2007, Breath of Hope, Inc., used the “TM” symbol in conjunction with CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS DAY and not CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS on its blog.
9. Upon information and belief, Breath of Hope, Inc., shortened the mark CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS DAY to CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS on or after October 22, 2007.
10. GENERIC USE OF THE TERM CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS: Congenital diaphragmatic hernia is a birth defect that affects approximately 1600 babies each year in the United States, taking the lives of approximately 800 of these children.
11. Congenital diaphragmatic hernia is a common medical problem. It affects 1 in every 2500 babies. It occurs as often as Spina Bifida and Cystic Fibrosis. Every 10 minutes, somewhere in the world a baby is born with congenital diaphragmatic hernia.
12. CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS is a term commonly used by the patients, medical care providers and other organizations affected by congenital diaphragmatic hernia. Congenital diaphragmatic hernia is often abbreviated as CDH and the term CDH awareness is used.
13. Over 4000 people, including officers from 8 congenital diaphragmatic hernia organizations and many doctors and nurses have signed an on-line petition against this trademark for this common phrase, CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS.
14. THREAT OF HARM TO OUR NON-PROFIT ORGANIZATION: CHERUBS was founded in February, 1995 to support families affected by congenital diaphragmatic hernia, to research congenital diaphragmatic hernia and to advocate for awareness of congenital diaphragmatic hernia.
15. Since at least as early as 2000, CHERUBS has been using the term awareness in correlation with congenital diaphragmatic hernia in the marketplace.
16. Since at least as early as 2000, CHERUBS has been using term CDH AWARENESS in the marketplace, using the common abbreviation of CDH for congenital diaphragmatic hernia.
17. On January 4, 2008 CHERUBS began the necessary paperwork to change our public name to and be Incorporated as CHERUBS - The Association of Congenital Diaphragmatic Hernia Research, Awareness and Support with our registration of an Employer Identification Number.
18. THREAT OF HARM TO OUR NON-PROFIT ORGANIZATION: CHERUBS has been threatened with this trademark since October, 2007. The first threats came immediately following a civil restraining order case filed by DAWN M. TORRENCE, President & Founder of CHERUBS against ELIZABETH DOYLE-PROPST, CEO and Founder of BREATH OF HOPE, INC that was dismissed only on the grounds that it would be better suited as a corporate tort suit.
19. On several occasions BREATH OF HOPE, INC. has contacted CHERUBS with threats of lawsuits sent to both our President and our lawyer. Cafepress.com, Yahoo.com, Zazzle.com and Google.com were contacted in an attempt to have our charity’s site removed from their listings and our fundraising store taken down because of our use of the common term CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS.

20. On September 18, 2008, Cafepress.com was contacted by ELIZABETH DOYLE-PROPST, CEO and Founder of BREATH OF HOPE, INC, requesting that CHERUBS on-line fundraising store be altered or removed because of our use of the term CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS.
21. On November 17, 2008, Zazzle.com notified CHERUBS that ELIZABETH DOYLE-PROPST, CEO and Founder of BREATH OF HOPE, INC, requested removal of fundraising products on CHERUBS account that contained the phrase "Congenital Diaphragmatic Hernia". This is the name of the disease and not the registered phrase, but ELIZABETH DOYLE-PROPST claimed registered ownership of this phrase.

It is my opinion that the United States Trademark Registration No. 3,503,325 for CONGENITAL DIAPHRAGMATIC HERNIA AWARENESS would be extremely detrimental to our organization, families affected by congenital diaphragmatic hernia, raising money to fund medical research of congenital diaphragmatic hernia and other organizations created to assist these families affected by congenital diaphragmatic hernia.

Sincerely,



Dawn M. Torrence Williamson
President and Founder, CHERUBS - The Association of Congenital Diaphragmatic Hernia Research, Advocacy and Support

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Reg. No. 3,503,325

Reg. Date: September 17, 2008

CERTIFICATE OF MAILING

I hereby certify that on December 4, 2008, I filed this PETITION TO CANCEL with the:

U.S. Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

With copies via First Class Mail, postage prepaid, to:

Elizabeth Doyle-Propst
Breath of Hope, Inc.
P.O. Box 6627
Charlottesville, VA 22906

Elizabeth Doyle-Propst
Breath of Hope, Inc.
53 Four Seasons Drive
Charlottesville, VA 22906

PRA International
Attn: Elizabeth Doyle-Propst
4105 Lewis and Clark Drive
Charlottesville, VA 22911



Dawn M. Torrence Williamson
President & Founder

CHERUBS – The Association of Congenital Diaphragmatic Hernia
Research, Advocacy and Support