

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

INTERNATIONAL ASSOCIATION OF)
 CERTIFIED HOME INSPECTORS and)
 MASTER INSPECTOR CERTIFICATION)
 BOARD, INC.,)
)
 Petitioner,)

Cancellation No. _____



HOME INSPECTION
UNIVERSITY

Service Mark:

RESIDENTIAL WARRANTY SERVICES,)
)
 Registrant.)
 _____)

Reg. No.: 4,798,398

PETITION FOR CANCELLATION

International Association of Certified Home Inspectors, Inc. (“InterNACHI”) and Master Inspector Certification Board, Inc. (“MICB”) (collectively the “Petitioners”) believe they are being damaged and will continue to be damaged by the registration of the service mark HIU HOME INSPECTION UNIVERSITY (and design) on the Principal Register for “continuing education services, namely, providing live and on-line continuing professional education seminars in the field of home inspections including, but not limited to, wind mitigation, residential and commercial buildings, and infrared thermal imaging” in International Class 041, as shown in U.S. Service Mark Registration No. 4,798,398 (the “Registration”) and, through their attorneys, petition to cancel this registration.

In support of this Petition for Cancellation, Petitioners allege as follows:

1. Petitioner InterNACHI is a Colorado non-profit corporation with tax-exempt status under Section 501(c)(6) of the Internal Revenue Code. InterNACHI's principal place of business is at 4635 Nautilus Court South, Unit C, Boulder, Colorado 80301.

2. Petitioner InterNACHI is an established and respected provider of licensing and continuing education seminars and certification programs for residential and commercial property inspection professionals.

3. Petitioner InterNACHI owns U.S. Service Mark Registration No. 3,772,419 for the service mark HOUSE OF HORRORS covering "providing of training to residential, environmental, and commercial inspectors" in International Class 041 in use since at least as early as 2006.

4. Petitioner MICB is a Colorado non-profit corporation with tax-exempt status under Section 501(c)(6) of the Internal Revenue Code. MICB's principal place of business is at 1730 30th Street, Suite 301, Boulder, Colorado 80301.

5. Petitioner MICB is an established and respected provider of certification standards that promote excellence and professionalism for inspection professionals operating in the residential and commercial-building inspection industry. Petitioner has promulgated rigorous certification standards that allow qualifying home inspectors to earn the "Certified Master Inspector" designation, which is the highest professional designation available in the industry.

6. Petitioner MICB owns U.S. Certification Mark Registration No. 5,089,809 for the certification mark CERTIFIED MASTER INSPECTOR covering "home inspection services" in U.S. Class B in use since at least as early as 1998 and U.S.

Certification Mark Registration No. 5,189,338 for the certification mark CMI for “home inspection services...” and “commercial building inspection services...” in U.S. Class B in use since at least as early as 1990.

7. Upon information and belief, Residential Warranty Services, Inc. (the “Registrant”) is an Indiana corporation with a principal place of business at 698 Pro Med Lane, Carmel, Indiana 46032.

8. Upon information and belief, Phillip Nathan Thornberry (“Thornberry”) is an individual having a business address at 698 Pro Med Lane, Carmel, Indiana 46032, who serves as president of Registrant, Residential Warranty Services, Inc (“RWS”). Upon information and belief, RWS sells home warranties.

9. Upon information and belief, Thornberry also serves as President of another entity, RWS Inspector Services Group, LLC (“RWSISG”), which also has a business address at 698 Pro Med Lane, Carmel, Indiana 46032. RWSISG owns and maintains a website at www.inspectorshop.net and sells products to home inspectors via that website.

10. Petitioners do not know the exact business relationship between Registrant and RWSISG; however, RWSISG also owns and maintains a website at www.homeinspectionuniversity.com. That website declares that “Home Inspection University” is offered “From The Inspectors Services Group.”

11. Upon information and belief, Registrant and RWSISG are for-profit businesses and RWSISG is a direct competitor of Petitioners’ that uses the mark HIU HOME INSPECTION UNIVERSITY (and design) with Registrant’s permission in connection with the provision of training and continuing education seminars for

professionals operating in the field of residential and commercial building inspections.

12. While the application to register the Registration (the “Application”) was pending, Registrant disclaimed, through its attorney representative, the terms “HOME INSPECTION UNIVERSITY” as merely describing an ingredient, quality, characteristic, function, feature, purpose, or use of Registrant’s services, and thus as an unregistrable component of the mark HIU HOME INSPECTION UNIVERSITY (and design). A copy of the Response to Office Action containing Registrant’s disclaimer is attached hereto as Exhibit “A.”

13. The term “University” is defined as “an institution of higher learning providing facilities for teaching and research and authorized to grant academic degrees; specifically: one made up of an undergraduate division which confers bachelor's degrees and a graduate division which comprises a graduate school and professional schools each of which may confer master's degrees and doctorates.” (University. 2017. In *Merriam-Webster.com*. Retrieved Nov. 15, 2017, from <https://www.merriam-webster.com/dictionary/university>).

14. On information and belief, Registrant is not accredited as a university by any recognized organization and does not offer degrees of any type or level.

15. Upon information and belief, no recognized university offers college credit for completion of any training offered by Registrant.

16. Petitioners, as competitors of Registrant, are likely to be damaged by the continued registration of the mark HIU HOME INSPECTION UNIVERSITY (and design).

COUNT I

**Service Mark is Deceptively Misdescriptive
(15 U.S.C. § 1052(e)(1) and 15 U.S.C. § 1064)**

17. Petitioners reallege and incorporate by reference the preceding allegations of this Petition for Cancellation.

18. Upon information and belief, the service mark HIU HOME INSPECTION UNIVERSITY (and design) is descriptive of educational services provided by an institution of higher learning conferring degrees in home-inspection related fields, and therefore, educational services offered under the service mark HIU HOME INSPECTION UNIVERSITY (and design) would reasonably be expected by consumers to be provided by a university, or an institution of higher learning authorized to confer degrees in home-inspection related fields, such that the mark HIU HOME INSPECTION UNIVERSITY (and design) misdescribes the non-degreed educational seminars provided under the mark.

19. Upon information and belief, home inspection professionals seeking educational or certification services are likely to believe that the misdescription correctly describes the educational services offered under the mark and that the services are offered by a university.

20. Upon information and belief, the misrepresentation would be material to a reasonable consumer in deciding whether or not to purchase the services.

WHEREFORE, Petitioners respectfully request that the Registration be cancelled and that this Petition be granted.

Petition for Cancellation
81152.0007

This Petition is submitted electronically together with the electronic filing fee of \$400.

Dated: 17 November 2017

Respectfully submitted,

/James A. Sheridan 43114/

James A. Sheridan

Libby Huskey

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ATTORNEYS FOR PETITIONER

**MASTER INSPECTOR CERTIFICATION BOARD,
INC.**

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2017 I served a true and correct copy of the foregoing **PETITION FOR CANCELLATION** by electronic mail and by U.S. mail, postage prepaid, and addressed to the following:

Phillip Nathan Thornberry, President
Alix Vollmer, Attorney of Record

Residential Warranty Services, Inc.
698 Pro-Med Lane
Carmel, Indiana 46032

Email: alix@alixvollmer.com

/James A. Sheridan 43114/
JAMES A. SHERIDAN
SHERIDAN LAW LLC

Exhibit A

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 07/31/2017)

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86431337
LAW OFFICE ASSIGNED	LAW OFFICE 118
MARK SECTION	
MARK FILE NAME	http://tsdr.uspto.gov/img/86431337/large
LITERAL ELEMENT	HIU HOME INSPECTION UNIVERSITY
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
COLOR(S) CLAIMED (If applicable)	The color(s) blue, black and white is/are claimed as a feature of the mark.
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of a blue vertical, stretched hexagon containing the white letters HIU, the wording HOME INSPECTION UNIVERSITY appears in black letters beneath the hexagon.
ADDITIONAL STATEMENTS SECTION	
DISCLAIMER	No claim is made to the exclusive right to use "Home", "Inspection", or "University" apart from the mark as shown.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Alix Vollmer/
SIGNATORY'S NAME	Alix L. Vollmer
SIGNATORY'S POSITION	Attorney of Record - IN bar member
DATE SIGNED	03/05/2015
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Mar 05 13:49:10 EST 2015
TEAS STAMP	USPTO/ROA-XX.XXX.XXX.XX-2 0150305134910963062-86431 337-5306c96187f2927aaf927 4d244fb1cca8f4b3fc2c589eb 9e5e8a9fcba2eea4c115-N/A- N/A-20150305134642811317

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 07/31/2017)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **86431337** HIU HOME INSPECTION UNIVERSITY (Stylized and/or with Design, see <http://tsdr.uspto.gov/img/86431337/large>) has been amended as follows:

ADDITIONAL STATEMENTS

Disclaimer

No claim is made to the exclusive right to use "Home", "Inspection", or "University" apart from the mark as shown.

SIGNATURE(S)

Response Signature

Signature: /Alix Vollmer/ Date: 03/05/2015

Signatory's Name: Alix L. Vollmer

Signatory's Position: Attorney of Record - IN bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 86431337

Internet Transmission Date: Thu Mar 05 13:49:10 EST 2015

TEAS Stamp: USPTO/ROA-XX.XXX.XXX.XX-2015030513491096

3062-86431337-5306c96187f2927aaf9274d244

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