

ESTTA Tracking number: **ESTTA221394**

Filing date: **06/30/2008**

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	Andrea Anderson		
Entity	Corporation	Citizenship	Deleware
Address	1500 Kearns Boulevard Suite B-200 Park City, UT 84060 UNITED STATES		

Attorney information	Andrea Anderson Holland & Hart LLP P O Box 8749 Denver, CO 80201 UNITED STATES docket@hollandhart.com, aanderson@hollandhart.com, drickers@hollandhart.com, cshearer@hollandhart.com Phone:303-473-2700
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Registration Subject to Cancellation

Registration No	3049075	Registration date	01/24/2006
Registrant	MONAVIE, LLC 10855 S. RIVER FRONT PARKWAY, SUITE 100 SOUTH JORDAN, UT 84095 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2003/09/01 First Use In Commerce: 2003/09/01 All goods and services in the class are cancelled, namely: Nutritional supplements; vitamins; mineral supplements; nutritional additives for use in foods for human consumption; plant and herb extracts for medical purposes; meal replacement shakes for boosting energy
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Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77288511	Application Date	09/25/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MONARCH NUTRACEUTICALS		
Design Mark			

Description of Mark	The mark consists of a butterfly formed with hexagons with a spectrum of colors from the top to the bottom of red, orange, yellow, green and blue, respectively, and the words "Monarch Nutraceuticals" with the colors green faded to blue from left to right..
Goods/Services	Class 005. First use: Bulk raw materials in the nature of minerals, vitamins, herbs, specialty chemicals and combinations thereof for use in nutritional supplements, herbal supplements, mineral supplements, vitamin supplements, dietary food supplements, and feed supplements for pets Class 040. First use: Distribution services and manufacturing services for others in the field of nutritional supplements, herbal supplements, mineral supplements, vitamin supplements, dietary food supplements, and feed supplements for pets

Attachments	Petition for Cancellation of 3049075.pdf (6 pages)(17210 bytes) 77288511#TMSN.jpeg (1 page)(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	/s/ Chris Shearer
Name	Chris Shearer
Date	06/30/2008

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

NutraMarks, Inc.,)	
)	
)	Registration No. 3,049,075
)	
Petitioner,)	Mark: MONARCH HEALTH SCIENCES
)	GIVING FLIGHT TO DREAMS
v.)	(& Design)
)	
Monavie, LLC,)	
)	
Respondent.)	

PETITION FOR CANCELLATION

Petitioner, Nutramarks, Inc., (hereinafter “Petitioner”), believes that it is being damaged by and will continue to be damaged by the registration of the mark MONARCH HEALTH SCIENCES GIVING FLIGHT TO DREAMS (& Design) for “nutritional supplements; vitamins, mineral supplements; nutritional additives for use in foods for human consumption; plant and herb extracts for medical purposes; meal replacement shakes for boosting energy” as shown in Registration No. 3,049,075 and through its attorneys, petitions to cancel this registration.

In support of this Petition for Cancellation, Petitioner alleges as follows:

1. Petitioner is a Delaware corporation with a principal place of business at 1500 Kearns Boulevard, Suite B-200, Park City, Utah.
2. Upon information and belief, Respondent is a Delaware corporation with a principal place of business at 10855 South River Front Parkway, Suite 100, South Jordan, Utah.

3. Since well prior to the application filing date and registration date of Registration No. 3,049,075, Petitioner, through its licensee and related company Monarch Nutritional Laboratories, Inc. has used its MONARCH, MONARCH NUTRITIONAL LABS, and MONARCH LABS marks and names in connection with raw materials for the production of nutritional supplements.

4. Upon information and belief, Petitioner's licensee and related company began using the MONARCH, MONARCH NUTRITIONAL LABS, and MONARCH LABS marks and names prior to Respondent's first use of MONARCH HEALTH SCIENCES GIVING FLIGHT TO DREAMS (& Design).

5. On September 25, 2007, Petitioner filed an application to register the mark MONARCH NUTRACEUTICALS (& Design) for "bulk raw materials in the nature of minerals, vitamins, herbs, specialty chemicals and combinations thereof for use in nutritional supplements, herbal supplements, mineral supplements, vitamin supplements, dietary food supplements, and feed supplements for pets" and "distribution services and manufacturing services for others in the field of nutritional supplements, herbal supplements, mineral supplements, vitamin supplements, dietary food supplements, and feed supplements for pets." The application was assigned Serial No. 77/288,511.

6. In an Office Action dated December 30, 2007, the Trademark Examining Attorney initially refused registration of Petitioner's Application Serial No. 77/288,511 under Section 2(d) of the Trademark Act, citing as a bar to registration Respondent's MONARCH HEALTH SCIENCES GIVING FLIGHT TO DREAMS (& Design) mark set forth in Registration Nos. 3,049,075.

7. On September 25, 2007, Petitioner filed an application to register the mark MONARCH NUTRACEUTICALS for “bulk raw materials in the nature of minerals, vitamins, herbs, specialty chemicals and combinations thereof for use in nutritional supplements, herbal supplements, mineral supplements, vitamin supplements, dietary food supplements, and feed supplements for pets” and “distribution services and manufacturing services for others in the field of nutritional supplements, herbal supplements, mineral supplements, vitamin supplements, dietary food supplements, and feed supplements for pets.” The application was assigned Serial No. 77/288,192.

8. In an Office Action dated December 30, 2007, the Trademark Examining Attorney initially refused registration of Petitioner’s Application Serial No. 77/288,192 under Section 2(d) of the Trademark Act, citing as a bar to registration Respondent’s MONARCH HEALTH SCIENCES GIVING FLIGHT TO DREAMS (& Design) mark set forth in Registration Nos. 3,049,075.

9. On October 10, 2007 Petitioner filed an application to register the mark MONARCH REACTED MINERALS for “bulk raw materials in the nature of minerals, vitamins, herbs, specialty chemicals and combinations thereof for use in nutritional supplements, herbal supplements, mineral supplements, vitamin supplements, dietary food supplements, and feed supplements for pets” and “distribution services and manufacturing services for others in the field of nutritional supplements, herbal supplements, mineral supplements, vitamin supplements, dietary food supplements, and feed supplements for pets.” The application was assigned Serial No. 77/300,230.

10. In an Office Action dated December 30, 2007, the Trademark Examining Attorney initially refused registration of Petitioner's Application Serial No. 77/300,230 under Section 2(d) of the Trademark Act, citing as a bar to registration Respondent's MONARCH HEALTH SCIENCES GIVING FLIGHT TO DREAMS (& Design) mark set forth in Registration Nos. 3,049,075.

11. Upon information and belief, Respondent is not using the mark MONARCH HEALTH SCIENCES GIVING FLIGHT TO DREAMS (& Design) and has abandoned it.

12. Petitioner will be harmed by the continued presence of Registration No. 3,049,075 on the Principal Register should the Examining Attorney's initial refusals based on this registration become final.

WHEREFORE, Petitioner respectfully requests that Registration No. 3,049,075 be cancelled and that this Petition be granted.

This Petition is submitted electronically together with an electronic payment in the amount of \$300. If the fee is found to be deficient for any reason, please charge Deposit Account No. 08-2623.

Dated: June 30, 2008.

Respectfully submitted,

By: /s/ Andrea Anderson
Andrea Anderson
Annie C. Haselfeld
HOLLAND & HART LLP
555 Seventeenth Street, Suite 3200
P.O. Box 8749
Denver, CO 80201
(303) 473-2700

Attorneys for Petitioner
Nutramarks, Inc.

CERTIFICATE OF SERVICE

I certify that on June 30, 2008, I served a copy of the foregoing PETITION FOR CANCELLATION to the following attorney of record for Respondent's

Registration by:

- | | |
|-------------------------------------|----------------------------|
| <input checked="" type="checkbox"/> | U.S. Mail, postage prepaid |
| <input type="checkbox"/> | Hand Delivery |
| <input type="checkbox"/> | Fax |
| <input type="checkbox"/> | Email |

Paul W. Hess
Strong & Hanni
3 Triad Center Suite 500
Salt Lake City UT 84180

s/ Chris Shearer