

ESTTA Tracking number: **ESTTA313762**

Filing date: **10/27/2009**

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	Aquagenus, LLC		
Entity	Limited Liability Company	Citizenship	Nevada
Address	7755 Center Avenue, Suite 1150 Huntington Beach, CA 92647 UNITED STATES		

Attorney information	Rod S. Berman Jeffer Mangels Butler & Marmaro LLP 1900 Avenue of the Stars, 7th Floor Los Angeles, CA 90067 UNITED STATES trademarkdocket@jmbm.com Phone:3102038080
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Registration Subject to Cancellation

Registration No	3181024	Registration date	12/05/2006
Registrants	Wheeler, David Suite 108 8196 Hall Blvd Beaverton, OR 97008 UNITED STATES Kosztolanyi, Nora Suite 108 8196 Hall Blvd Beaverton, OR 97008 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 2004/11/25 First Use In Commerce: 2004/12/15 All goods and services in the class are cancelled, namely: Bottled Drinking Water

Grounds for Cancellation

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

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77839787	Application Date	10/01/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	AQUAHYDRATE		

Design Mark	AQUAHYDRATE
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2004/03/31 First Use In Commerce: 2004/03/31 Bottled water

Attachments	77839787#TMSN.jpeg (1 page)(bytes) 70682-0001 Petition.pdf (4 pages)(35271 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	/Rod S. Berman/
Name	Rod S. Berman
Date	10/27/2009

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

AQUAGENUS, LLC

Petitioner,

v.

NORA KOSZTOLANYI;
DAVID WHEELER

Registrants.

Cancellation No. _____

Registration No.: 3,181,024

Mark: AQUAHYDRATE

PETITION FOR CANCELLATION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Petitioner Aquagenus, LLC, a Nevada corporation ("Petitioner"), located at 7755 Center Avenue, Suite 1150, Huntington Beach, California 92647, believes that it is and will be damaged by the continued registration of Registration No. 3,181,024, dated December 5, 2006, and based on an application filed on March 31, 2006, and owned of record by Nora Kosztolanyi and David Wheeler ("Registrants"), for the mark AQUAHYDRATE in connection with bottled drinking water, and hereby petitions for cancellation of said registration.

As grounds for this Petition, it is alleged that:

1. For many years, Petitioner has been engaged in the business of selling and/or offering for sale bottled water in connection with the mark AQUAHYDRATE (the "Mark.")

2. At least as early as May 26, 2004, and long prior to the application filing date of Registrants' registration or the date of first use alleged in the registration, Petitioner

adopted and began to use the Mark in commerce for and in connection with its bottled water. Petitioner has continuously used Petitioner's Mark in commerce for and in connection with said goods since its adoption and first use.

3. The application from which Registration No. 3,181,024 issued was filed on or about March 31, 2006, based on an alleged use in commerce of the AQUAHYDRATE mark in connection with bottled drinking water in Int. Class 32. In the application, Registrants claimed a date of first use of November 25, 2004, and claimed a date of first use in commerce of December 15, 2004.

4. On information and belief, Registrants' mark AQUAHYDRATE was never in use in commerce with Registrants' goods. On information and belief, Registrants' claim in the application of use and use in commerce of Registrants' goods constitutes fraud on the Trademark Office.

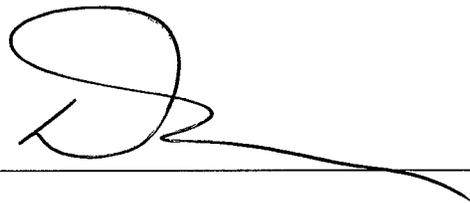
5. Registrants' mark so resembles Petitioner's Mark as to be likely, when used in connection with Registrant's goods, as to cause confusion, or mistake, or deception. Thus, consumers will likely believe that Registrants' use of the mark in connection with Registrants' goods is in some way associated or connected with or sponsored, authorized, or warranted by Petitioners. Any objection or fault with Registrants' goods offered in connection with Registrants' mark would reflect upon and seriously injure Petitioner's reputation in connection with goods offered under Petitioner's Mark.

6. Registrants' Registration No. 3,181,024 grants it at least a prima facie exclusive right to use of the mark AQUAHYDRATE. Such registration would be a source of damage and injury to Petitioner.

WHEREFORE, Petitioner respectfully requests that this Cancellation be sustained and that Registrants' Registration No. 3,181,024 be cancelled.

Respectfully submitted,

Dated: 10/26/9



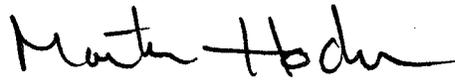
A handwritten signature in black ink, appearing to be 'R. Berman', written over a horizontal line.

Rod S. Berman
Jessica C. Bromall
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Attorneys for Petitioner Aquagenus, LLC

CERTIFICATE OF SERVICE

It is hereby certified that on Oct. 27, 2006, a copy of the foregoing PETITION FOR CANCELLATION has been sent by first class mail, postage prepaid, to the correspondence address of record for Registrants:

Marisa N. James
The DuBoff Law Group, LLC
Suite 200
6665 SW Hampton St.
Portland OR 97223



Marta Hodur