

ESTTA Tracking number: **ESTTA323911**

Filing date: **12/23/2009**

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	Quest Network, Inc.		
Entity	Corporation	Citizenship	Minnesota
Address	724 North First Street Minneapolis, MN 55401 UNITED STATES		

Attorney information	Michael M. Lafeber Briggs and Morgan, P.A. 80 South 8th Street Suite 2200 Minneapolis, MN 55402 UNITED STATES mlafeber@briggs.com Phone:612-977-8400
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Registrations Subject to Cancellation

Registration No	3545600	Registration date	12/09/2008
Registrant	WTB TECHNOLOGY CORPORATION 245 INDUSTRIAL STREET BAKERSFIELD, CA 93307 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 2008/05/01 First Use In Commerce: 2008/05/01
All goods and services in the class are cancelled, namely: Bottled drinking water; Bottled water;
Drinking water; Spring 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)		
Registration No	3660184	Registration date	07/28/2009
Registrant	WTB TECHNOLOGY CORPORATION 245 INDUSTRIAL STREET BAKERSFIELD, CA 93307 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 2008/05/01 First Use In Commerce: 2008/05/01
All goods and services in the class are cancelled, namely: Bottled drinking water; Bottled water;
Drinking water; Sparkling 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/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Blue Zones		
Goods/Services	The goods and services are, without limitation, educational services in the nature of an ongoing program providing information concerning healthy lifestyle and longevity-oriented expeditions to cultures of longevity around the world provided via a global computer network, educational services concerning diet, specifically a diet offering a variety of vitamins, minerals, antioxidants, and adequate amounts of water, and tea, nuts, vegetable seeds, water, and water bottles.		

Attachments	Quest Petition for Cancellation.pdf (16 pages)(425576 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 Overnight Courier on this date.

Signature	/Michael M. Lafeber/
Name	Michael M. Lafeber
Date	12/23/2009

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

In the Matter of:

**Registration No. 3,545,600 (Registered December 9, 2008)
Mark: COSTA RICA BLUE ZONE**

**Registration No. 3,660,184 (Registered July 28, 2009)
Mark: BLUE ZONE WATER**

Quest Network, Inc.,

Petitioner,

-against-

WTB Technology Corporation,

Respondent.

Cancellation No. _____

PETITION FOR CANCELLATION

I hereby certify that this Notice of Opposition is being transmitted to the TTAB via the electronic System for Trademark Trial and Appeals on December 23, 2009.

/Michael M. Lafeber/

Michael M. Lafeber

TO THE COMMISSIONER FOR TRADEMARKS:

Petitioner Quest Network, Inc. believes it is, and will continue to be, damaged by the existence of Registration Number 3,545,600 for the mark COSTA RICA BLUE ZONE and Registration No. 3,660,184 for the mark BLUE ZONE WATER and hereby petitions for cancellation of such registrations pursuant to Section 14 of the Trademark Act of 1946, as amended (the "Lanham Act"), 15 U.S.C. § 1064.

As grounds for the cancellation, Petitioner alleges that:

THE PARTIES

1. Petitioner Quest Network, Inc. ("Petitioner") is a corporation duly organized and existing under the laws of the State of Minnesota, with its principal place of business located in Minneapolis, Minnesota.

2. Respondent WTB Technology Corporation ("Respondent") is, upon information and belief, a corporation duly organized and existing under the laws of the State of California, with its principal place of business located in Bakersfield, California.

PETITIONER'S "BLUE ZONES" MARK

3. Petitioner has well-established trademark rights in the mark "BLUE ZONES." Petitioner adopted the BLUE ZONES Mark at least as early as 2005 and is the owner of United States Trademark Registration No. 3,297,504, covering the "BLUE ZONES" standard character mark for, without limitation, "educational services in the nature of an ongoing program providing information concerning healthy lifestyle and longevity-oriented expeditions to cultures of longevity around the world provided via a global computer network." Attached hereto as "Exhibit A" are true and correct copies of November 17, 2009 printouts from the online PTO TARR and assignment databases for the '504 Registration (available online at <http://tess2.uspto.gov>.)

4. Petitioner's founder, Mr. Dan Buettner, is the author of the *New York Times* bestselling book "The Blue Zones: Lessons for Living Longer From the People Who've Lived the Longest," which has more than 200,000 copies in print to date. As detailed in his book, Mr. Buettner spent several years researching and studying areas of the world where people live to the age of 100 at a much higher rate than the general population. Petitioner has been actively educating people on lifestyle characteristics that can help them live longer and better lives since at least as early as 2005. A large component of Petitioner's goods and services are directly related to diet, specifically a diet offering a variety of vitamins, minerals, antioxidants, and adequate amounts of water.

5. Mr. Buettner's *New York Times* bestselling book highlighted the potential significance of the water in the Nicoya region of Costa Rica. Specifically, Petitioner's team of

scientists discovered that water in the Nicoya region contained extremely elevated levels of calcium and magnesium. ("*Something In The Water?*" pp. 200-203.)

6. Since its adoption, Petitioner has continuously and actively utilized its BLUE ZONES Mark to promote its goods and services. As just one example, the BLUE ZONES Mark has been promoted at www.bluezones.com. The website has continually and routinely included, without limitation, sections such as the "EAT WISELY" section containing entries like "9 Diet Tips to Living Longer"; "Is Green Tea Really Good For Me"; "Nuts! How They Can Increase Longevity and Reduce Cholesterol"; "Red, Red, Wine"; "Can Vitamins Cure?" and "Grow Your Own Pesto." The website has also repeatedly highlighted and promoted the potential significance of the water in the Nicoya region of Costa Rica.

7. In addition to the website, the BLUE ZONES Mark has been utilized with a variety of products, including, without limitation, tea, nuts, vegetable seeds, water, and water bottles.

8. Petitioner has expended substantial resources in the promotion of its BLUE ZONES Mark and in establishing goodwill associated therewith. In addition to the *New York Times* bestselling book, the BLUE ZONES Mark has been promoted via, without limitation, The Oprah Winfrey Show, Good Morning America, ABC World News Tonight, ABC 20/20, ABC Nightline, NBC Today Show, NBC Nightly News, NBC Dateline, CBS Early Show, CNN's Anderson Cooper 360, CNN Special "Chasing Life", FOX News, BBC-TV, The Martha Stewart Show, The Dr. Oz Show, The Doctors, *The Wall Street Journal*, *USA Today*, *The New York Times*, *Forbes*, *US News and World Report*, *People*, *Glamour*, *AARP The Magazine*, *Shape*, *National Geographic International Editions*, *Parade Magazine*, *MacLean's*, *Reuters*, *Associated Press*, and multiple radio appearances, including National Public Radio.

9. Petitioner has extensively advertised, promoted and offered Petitioner's goods and services under the BLUE ZONES Mark to the public through various channels of trade and commerce with the result that Petitioner's customers and the public in general have come to know and recognize Petitioner's BLUE ZONES Mark and associate the same with Petitioner and goods and services offered by Petitioner. Petitioner's BLUE ZONES Mark has thus attained significant good will and Petitioner has acquired substantial common law rights in the BLUE ZONES Mark. Petitioner's BLUE ZONES common law rights and federal registration are hereinafter referred to jointly as the "BLUE ZONES Mark."

10. As a result, the BLUE ZONES Mark has become, through widespread and favorable acceptance throughout the world, an asset of substantial value to Petitioner.

11. Petitioner's BLUE ZONES mark is an inherently distinctive strong mark and deserving of a broad scope of protection.

RESPONDENT'S REGISTRATION NO. 3,545,600
("COSTA RICA BLUE ZONE")

12. On or about July 24, 2008, Respondent filed a used based application with the United States Patent and Trademark Office ("USPTO") seeking federal registration of the mark "COSTA RICA BLUE ZONE" covering "[b]ottled drinking water; [b]ottled water; [d]rinking water; [and] [s]pring water." The application alleged a date of first use and first use in commerce of May 1, 2008.

13. The specimen of use provided to the USPTO was identified as "labels." A review of the specimen indicates it is not a label, but rather simply a sheet of paper with the purported mark typed thereon. Petitioner's investigation has been unable to confirm any actual use of such mark in commerce.

14. Despite Petitioner's request, Respondent has failed to provide any evidence of actual use. In fact, communications with Respondent have further confirmed Respondent has not

used the mark in commerce in such a fashion as to support a use based application. In an e-mail dated July 11, 2009, Respondent indicated that it was "considering selling Costa Rican Blue Zone water" and that such project was not "high on our priority list" but rather "just an idea."

15. In an e-mail dated July 16, 2009, Respondent indicated that it had "tested the product in [*C*]osta Rica." (emphasis added.) Respondent did indicate it had conducted a "sampling in northern California" but provided no further details regarding such alleged "sampling."

16. On information and belief, at the time of said application, Respondent had not used the alleged "COSTA RICA BLUE ZONE" mark in commerce as required by, without limitation, 15 U.S.C. 1051(a), 37 C.F.R. §§2.34(a)(1)(i), 2.76(b)(1)(ii), and TMEP 901.

17. On or about December 9, 2008, the subject application registered as United States Trademark Registration No. 3,545,600.

RESPONDENT'S REGISTRATION NO. 3,660,184
("BLUE ZONE WATER")

18. On or about July 15, 2008, Respondent filed a used based application with the United States Patent and Trademark Office ("USPTO") seeking federal registration of the mark "BLUE ZONE WATER" covering "[b]ottled drinking water; [b]ottled water; [d]rinking water; [and] [s]pring water." The application alleged a date of first use and first use in commerce of May 1, 2008.

19. The specimen of use provided to the USPTO was identified as "labels." A review of the specimen indicates it is not a label, but rather simply a sheet of paper with the purported mark typed thereon. Petitioners investigation has been unable to confirm any actual use of such mark in commerce.

20. Despite Petitioner's request, Respondent has failed to provide any evidence of actual use. As indicated above, communications with Respondent have further confirmed

Respondent has not used the mark in commerce in such a fashion as to support a use based application.

21. On information and belief, at the time of said application, Respondent had not used the alleged "BLUE ZONE WATER" mark in commerce as required by, without limitation, 15 U.S.C. 1051(a), 37 C.F.R. §§2.34(a)(1)(i), 2.76(b)(1)(ii), and TMEP 901.

22. On or about July 28, 2009, the subject application registered as United States Trademark Registration No. 3,660,184.

GROUND FOR CANCELLATION

23. Petitioner believes that Registration Nos. 3,660,184 and 3,545,600, if permitted to remain in force, do cause and will continue to cause injury and damage to Petitioner. Accordingly, Petitioner hereby petitions to cancel such marks. The grounds for cancellation are alleged below.

24. As alleged above, Petitioner has valuable and prior federal registration and common law right in the BLUE ZONES Mark.

25. At no time has Petitioner authorize Respondent to use any of its BLUE ZONES Marks in conjunction with any goods or services.

26. Respondent filed the application for Registration Nos. 3,660,184 and 3,545,600 without Petitioner's knowledge or authority.

27. Upon information and belief, Respondent had full knowledge of Petitioner's use of its BLUE ZONES Marks in conjunction with water, including, without limitation, touting the benefits of the water located in certain areas of Costa Rica, prior to filing Respondent's subject applications.

28. Upon information and belief, at the time of filing its subject applications, Respondent knew Petitioner had legal rights superior to applicant's in the subject mark.

29. Upon information and belief, at the time of filing its subject applications, Respondent knew that a likelihood of confusion would result from any use of Respondent's purported marks with the identified goods and/or services and Respondent had no reasonable basis for believing otherwise.

30. Respondent, in failing to disclose Petitioner's prior use and ownership interest in the "BLUE ZONES" Marks to the Patent and Trademark Office, intended to procure registrations to which Respondent was not entitled.

31. Respondent misrepresented that it had used the mark in commerce at the time of its applications in order to procure registrations to which Respondent was not entitled.

32. Respondents subject applications stated that: 1) "[A]pplicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services"; 2) "[T]he mark was first used at least as early as 05/01/2008, and first used in commerce at least as early as 05/01/2008"; 3) The purported marks were "now in use in such commerce."; and 4) "The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) LABEL(BLUE ZONE WATER) WILL BE ATTACHED TO CONTAINER, CONTAINING THE PRODUCT."

33. As part of its applications, Respondent and/or its authorized agent, signed oaths or declarations to the United States Patent and Trademark indicating: 1) "he/she believes the applicant to be the owner of the trademark/service mark sought to be registered"; 2) "he/she believes applicant to be entitled to use such mark in commerce"; and 3) "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to

be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive"; and 4) "that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true."

34. At the time such oaths/declarations were executed, Respondent knew the statements contained therein to be false and inaccurate. Respondent submitted such oaths/declarations with the intent to procure registrations which it was not entitled to.

35. The marks covered by Respondent's fraudulently obtained Registrations are identical and/or substantially similar to Petitioner's BLUE ZONES Marks in terms of, without limitation, sound, appearance and commercial impression.

36. The goods recited in Respondent's fraudulently obtained Registrations are identical to or closely related to the goods and services provided by Petitioner under its BLUE ZONES Marks.

37. Upon information and belief, the conditions surrounding any actual, proposed or potential marketing of Petitioner's and Respondent's goods and services are such that the goods and services would or could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods/services emanate from or are sponsored by a common source.

38. Petitioner has prior and senior rights in the mark covered by Respondent's subject Registrations pursuant to its use in commerce and prior federal registrations.

39. Petitioner has and will continue to be damaged by the existence of Registration Nos. 3,660,184 and 3,545,600 and such Registrations should be cancelled pursuant to Section 14 of the Trademark Act of 1946, as amended (the "Lanham Act"), 15 U.S.C. § 1064, and Lanham Act § 2(d), 15 U.S.C. § 1052(d). Without limitation, such Registrations were fraudulently

obtained, Respondent has not used the subject marks in commerce, and the subject marks so resemble Petitioner's BLUE ZONES Marks as to be likely to cause confusion, mistake and to deceive under the Lanham Act.

WHEREFORE, Petitioner respectfully requests that this Petition for Cancellation be sustained and that Registration Nos. 3,660,184 and 3,545,600 be canceled. Respectfully submitted,

Dated: December 23, 2009

BRIGGS AND MORGAN, P.A.

By /Michael M. Lafeber/

Michael M. Lafeber (#242871)

2200 IDS Center

80 South Eighth Street

Minneapolis, Minnesota 55402

Telephone: (612) 977-8472

Facsimile: (612) 977-8650

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PETITION FOR CANCELLATION** was served via Federal Express and on December 23, 2009 upon the following:

Mr. Craig Waterman
President
WTB Technology Corporation
245 Industrial Street
Bakersfield, California 93307

Date: December 23, 2009

/Michael M. Lafeber/
Michael M. Lafeber

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Serial Number: 78833856 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3297504

Mark

Blue Zones

(words only): BLUE ZONES

Standard Character claim: Yes

Current Status: Registered.

Date of Status: 2007-09-25

Filing Date: 2006-03-09

Transformed into a National Application: No

Registration Date: 2007-09-25

Register: Principal

Law Office Assigned: LAW OFFICE 109

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2007-09-25

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Quest Network, Inc.

Address:
Quest Network, Inc.
724 North First Street

EXHIBIT A

Minneapolis, MN 55401
United States
Legal Entity Type: Corporation
State or Country of Incorporation: Minnesota
Phone Number: 612.252.1739
Fax Number: 612.338.9824

GOODS AND/OR SERVICES

International Class: 041
Class Status: Active
Educational services in the nature of an ongoing program providing information concerning healthy lifestyle and longevity-oriented expeditions to cultures of longevity around the world provided via a global computer network
Basis: 1(a)
First Use Date: 2005-03-01
First Use in Commerce Date: 2005-05-01

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-09-25 - Registered - Principal Register
2007-07-10 - Published for opposition
2007-06-20 - Notice of publication
2007-04-30 - Law Office Publication Review Completed
2007-04-27 - Approved for Pub - Principal Register (Initial exam)
2007-04-27 - Examiner's Amendment Entered
2007-04-27 - EXAMINERS AMENDMENT E-MAILED
2007-04-27 - Examiners Amendment - Written
2007-04-24 - TEAS Change Of Correspondence Received

2007-03-13 - Report Completed Suspension Check Case Still Suspended

2007-03-08 - Assigned To LIE

2006-08-26 - Letter of suspension e-mailed

2006-08-26 - Suspension Letter Written

2006-08-25 - Assigned To Examiner

2006-03-15 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

Quest Network, Inc.
724 North First Street
Minneapolis MN 55401
Phone Number: 612-252-1739
Fax Number: 612-338-9824



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No assignment has been recorded at the USPTO

For Serial Number: 78833856

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Web interface last modified: October 18, 2008 v.2.0.2

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BLUE ZONE WATER

Word Mark BLUE ZONE WATER
Goods and Services IC 032. US 045 046 048. G & S: Bottled drinking water; Bottled water; Drinking water; Sparkling water. FIRST USE: 20080501. FIRST USE IN COMMERCE: 20080501
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 77523091
Filing Date July 15, 2008
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition May 12, 2009
Supplemental Register Date April 7, 2009
Registration Number 3660184
Registration Date July 28, 2009
Owner (REGISTRANT) WTB TECHNOLOGY CORPORATION CORPORATION CALIFORNIA 245 INDUSTRIAL STREET BAKERSFIELD CALIFORNIA 93307
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "WATER" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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COSTA RICA BLUE ZONE

Word Mark COSTA RICA BLUE ZONE
Goods and Services IC 032. US 045 046 048. G & S: Bottled drinking water; Bottled water; Drinking water; Spring water. FIRST USE: 20080501. FIRST USE IN COMMERCE: 20080501
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 77530265
Filing Date July 24, 2008
Current Filing Basis 1A
Original Filing Basis 1A
Registration Number 3545600
Registration Date December 9, 2008
Owner (REGISTRANT) WTB TECHNOLOGY CORPORATION CORPORATION CALIFORNIA 245 INDUSTRIAL STREET BAKERSFIELD CALIFORNIA 93307
Type of Mark TRADEMARK
Register SUPPLEMENTAL
Live/Dead Indicator LIVE

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