

ESTTA Tracking number: **ESTTA376254**

Filing date: **11/01/2010**

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	Herbalife International, Inc.		
Entity	Corporation	Citizenship	Nevada
Address	800 West Olympic Boulevard Suite 406 Los Angeles, CA 90015 UNITED STATES		

Attorney information	Elizabeth A. Linford Ladas & Parry LLP 5670 Wilshire Boulevard Suite 2100 Los Angeles, CA 90036 UNITED STATES elinford@la.ladas.com Phone:3239342300		
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**Registration Subject to Cancellation**

Registration No	2684025	Registration date	02/04/2003
Registrant	CROOK, THOMAS H., III. PH.D. 4240 GALT OCEAN DRIVE #2003 FORT LAUDERDALE, FL 33308 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 005. First Use: 1993/00/00 First Use In Commerce: 1993/00/00 All goods and services in the class are cancelled, namely: dietary supplements, nutritional supplements and herbal supplements
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**Grounds for Cancellation**

Abandonment	Trademark Act section 14
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Attachments	Pet to Cancel FITMIND.pdf ( 4 pages )(152483 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	/elizabeth a linford/
Name	Elizabeth A. Linford
Date	11/01/2010



Petition to Cancel  
Reg. No. 2,684,025  
Mark: FITMIND  
Registrant: Thomas H. Crook, III, Ph.D.  
Petitioner: Herbalife International, Inc.

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

*In the matter of:*

Trademark Registration Number 2,684,025

For the mark: FITMIND

Class: 5

Registered: February 4, 2003

HERBALIFE INTERNATIONAL, INC.,

Petitioner,

v.

THOMAS H. CROOK, III, PH.D.,

Registrant.

Cancellation No. \_\_\_\_\_

**PETITION TO CANCEL**

HERBALIFE INTERNATIONAL, INC., a corporation organized and existing under the laws of the State of Nevada, located and doing business at 800 West Olympic Boulevard, Suite 406, Los Angeles, California 90015 (hereinafter, "Petitioner"), believes it will be damaged by the continued registration of the mark FITMIND (hereinafter, "Registrant's Mark") displayed in U.S. Trademark Registration Number 2,684,025 (hereinafter, the "Registration") in the name of THOMAS H. CROOK, III, PH.D., an individual citizen of the United States with an address of 4240 Galt Ocean Drive, Fort Lauderdale, Florida 33308 (hereinafter, "Registrant"), and by and through its attorneys, hereby opposes the same. Petitioner deems itself injured by said

registration and hereby applies for cancellation thereof. The grounds for cancellation are as follows:

1. Petitioner is the owner of U.S. Trademark Application Serial No. 77/970004 for the mark MINDFIT in Class 5 filed on March 26, 2010 (hereinafter, “Petitioner’s Mark”).

2. Petitioner provides or has a bona fide intent to provide “dietary supplements” under Petitioner’s Mark (hereafter, “Petitioner’s Goods”).

3. On June 28, 2010, the Trademark Office issued an office action against Application Serial No. 77/970004 under Section 2(d) of the Trademark Act, alleging potential likelihood of confusion with the mark FITMIND as displayed in the Registration for use on “dietary supplements, nutritional supplements and herbal supplements” in Class 5 (hereinafter, Registrant’s Goods”).

4. Upon information and belief, the Registration resulted from an intent-to-use application filed on May 13, 1999. Registrant requested and the Trademark Office granted a total of four extensions for filing a Statement of Use.

5. Upon information and belief, Registrant filed a Statement of Use on September 13, 2002, claiming use of the mark since 1993 – a date that is six years prior to the filing date of the application that matured into the Registration. The Registration was subsequently issued on February 4, 2003.

6. Upon information and belief, Registrant has ceased using Registrant’s Mark in connection with Registrant’s Goods, without intent to resume such use.

7. Petitioner alleges, based on information and belief, that Registrant has abandoned any and all rights in the Registration and Registrant's Mark as a result of more than three years of non-use in the ordinary course of trade in commerce in connection with Registrant's Goods.

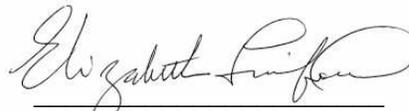
8. Registrant has thus abandoned Registrant's Mark for use in connection with Registrant's Goods.

9. Unless the Registration is cancelled, the Registration will have an adverse impact upon whether the United States Patent and Trademark Office will register Petitioner's Mark.

10. Petitioner will be damaged and prejudiced by continuance of the Registration with respect to Registrant's Goods because Petitioner will be unable to register Petitioner's Mark for Petitioner's Goods and will thus be denied the benefits afforded by federal registration of Petitioner's Mark.

WHEREFORE, Petitioner requests that this Petition to Cancel be granted and Trademark Registration No. 2,684,025 be cancelled in its entirety.

Respectfully submitted,



Elizabeth A. Linford  
Attorney for Petitioner

Date: November 1, 2010

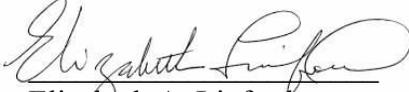
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Petition to Cancel  
Reg. No. 2,684,025  
Mark: FITMIND  
Registrant: Thomas H. Crook, III, Ph.D.  
Petitioner: Herbalife International, Inc.

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office via ESSTA (*Electronic System for Trademark Trials and Appeals*) on the date identified below.

Date: November 1, 2010

  
Elizabeth A. Linford

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **PETITION TO CANCEL** has been served on Registrant on this 1st day of November 2010 via First Class Mail, postage prepaid, to:

Thomas H. Crook, III, Ph.D.  
4240 Galt Ocean Drive, #2003  
Fort Lauderdale, FL 33308

Date: November 1, 2010

  
Elizabeth A. Linford