

ESTTA Tracking number: **ESTTA522186**

Filing date: **02/19/2013**

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	NutriLife International, Inc.		
Entity	Corporation	Citizenship	Oregon
Address	207 S.E. Oak St. Second Floor Hillsboro, OR 97123 UNITED STATES		

Attorney information	David Madden Mersenne Law LLC 1500 SW First Avenue Suite 1170 Portland, OR 97201 UNITED STATES uspto@mersenne.com Phone:5036791671
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Registration Subject to Cancellation

Registration No	3815143	Registration date	07/06/2010
Registrant	Foti, Andrew Bert Bda. Buena Vista, 167 Quisqueya Street San Juan, 00917 PR		

Goods/Services Subject to Cancellation

Class 021. First Use: 2008/11/20 First Use In Commerce: 2008/11/20
All goods and services in the class are cancelled, namely: Cooking strainers; Cookware, namely, pots and pans; Cookware, namely, steamers; Frying pans; Pans; Skillets

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85428504	Application Date	09/21/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NUTRI LIFE INTERNATIONAL		

Design Mark	<h1>Nutri Life International</h1>
Description of Mark	NONE
Goods/Services	Class 021. First use: First Use: 2002/10/07 First Use In Commerce: 2002/10/07 Cookware, namely, stainless-steel skillets, saucepans, stock pots, griddles and slicers Class 035. First use: First Use: 2002/10/07 First Use In Commerce: 2002/10/07 Retail services by direct solicitation by sales agents in the field of cookware and water filtration products

U.S. Application No.	85428546	Application Date	09/21/2011
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	NUTRI LIFE INTERNATIONAL
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Design Mark	
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Description of Mark	The mark consists of a simplified globe in green and blue showing North and South America, with a green partial arc cradling the globe on the left side; to the right of and partially overlapping the globe, the words Nutri and Life appear in green above a horizontal line, also green; the word INTERNATIONAL appears in green under the horizontal line.
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Goods/Services	Class 035. First use: First Use: 2002/10/07 First Use In Commerce: 2002/10/07 Retail services by direct solicitation by sales agents in the field of cookware and water filtration products
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Attachments	85428504#TMSN.jpeg (1 page)(bytes) 85428546#TMSN.jpeg (1 page)(bytes) 20130219_Petition.pdf (2 pages)(355167 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	/David H. Madden/
Name	David Madden
Date	02/19/2013

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

NutriLife International, Inc.)	PETITION TO CANCEL	
)		
Petitioner)	Trademark Registration No.	<u>3,815,143</u>
<i>v.</i>)	For the mark:	<u>NUTRALIFE</u>
Andrew Bert FOTI,)	Date registered:	<u>6 July 2010</u>
)		
Respondent)		
_____)		

NutriLife International, Inc. is an Oregon corporation having a principal place of business address at 207 S.E. Oak Street, 2F, Hillsboro, Oregon 97123.

To the best of Petitioner's knowledge, respondent Andrew Bert FOTI is an individual residing in Puerto Rico, who uses the NUTRALIFE mark in connection with activities of International Home Products, Inc., a Puerto Rican corporation having a business address at Avenida Quisquella #167, San Juan, Puerto Rico 00919.

Petitioner believes it is damaged by the above-identified registration, and hereby petitions to cancel the same. The grounds for cancellation are:

- 1) Petitioner has conducted its business and engaged in interstate commerce using the NUTRI LIFE INTERNATIONAL name and marks since at least as early as 28 October 2002.
- 2) Petitioner first sought registration of its mark in an application filed 31 March 2005 (serial number 78/599,585). No similar registered or pending marks that would have barred registration at that time were found. However, the application became abandoned on 2 May 2006 for failure to respond to an Office Action.

- 3) Petitioner filed new applications for registration of its marks on 21 September 2011 (applications 85/428,504 for NUTRI LIFE INTERNATIONAL and 85/428,546 for NUTRI LIFE INTERNATIONAL design). These applications were refused in view of the registration at issue in this action.
- 4) Respondent did not apply to register his mark until 15 September 2008.
- 5) Respondent's Statement of Use, filed 27 October 2009, alleged first use of Respondent's mark on 20 November 2008.
- 6) Petitioner's use of its marks pre-dates Respondent's alleged use of his mark by more than six (6) years.
- 7) If, as the trademark examining attorney contends, Petitioner's mark so resembles Respondent's mark as to be likely, when applied to the goods and/or services of the Petitioner, to cause confusion; then Respondent's use of its mark must be equally likely to cause confusion among Petitioner's customers and the public. Consequently, Respondent's registration should be cancelled because Petitioner has priority of use with respect to the mark and for those goods and/or services.

For the foregoing reasons, Petitioner respectfully requests that the Trademark Trial and Appeal Board enter its decision to **CANCEL** Respondent's registration no. 3,815,143.

Respectfully submitted,
MERSENNE LAW, LLC

Dated: 19 February, 2013

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Attorney for Petitioner