

ESTTA Tracking number: **ESTTA569968**

Filing date: **11/08/2013**

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

Proceeding	92056801
Party	Defendant Andrew Bert Foti
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Date	11/08/2013
Attachments	Amended Answer to Petition to Cancel.pdf(133160 bytes)

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

NutriLife International, Inc.

Petitioner

v.

Andrew Bert Foti

Respondent.

Petition to Cancel

Cancellation No. 92056801

Trademark Registration No. 3,815,143

For the Mark: NUTRALIFE

Date Registered: 6 July, 2010

RESPONDENT'S AMENDED ANSWER TO "PETITION TO CANCEL"

Andrew Bert Foti ("Mr. Foti") is an individual with business address at Bda. Buena Vista, 167 Quisqueya Street, San Juan, Puerto Rico 00917. Mr. Foti is the owner of all right, title, and interest in and to the NUTRALIFE mark, which mark is registered in the U.S. Patent and Trademark Office ("USPTO") in Class 21.

1. The allegations contained in paragraph 1 of the Petition to Cancel do not refer to Mr. Foti and, thus, do not require a response. If a response is required, Mr. Foti denies the allegations contained in this paragraph as he lacks sufficient knowledge and information to form an opinion on the veracity of the allegations.

2. Mr. Foti admits the allegations contained in paragraph 2 of the Petition to Cancel. Mr. Foti affirmatively alleges that the Office Action raised several issues as to Petitioner's identification of goods or services in the application, which were not addressed by Petitioner and, thus, the application became abandoned.

3. Mr. Foti admits the allegations contained in paragraph 3 of the Petition to Cancel.

4. Mr. Foti admits the allegations contained in paragraph 4 of the Petition to Cancel.

5. Mr. Foti admits the allegations contained in paragraph 5 of the Petition to Cancel.

6. Mr. Foti denies the allegations contained in paragraph 6 of the Petition to Cancel as he lacks sufficient knowledge and information to form an opinion on the veracity of the allegations regarding Petitioner's alleged date of first use.

7. The allegations contained in the first sentence of paragraph 7 of the Petition to Cancel constitute legal conclusions and, thus, do not require a response. If a response to the allegations in the first sentence of this paragraph is required, they are denied. The second sentence of paragraph 7 of the Petition to Cancel is denied.

Affirmative Defenses

8. Since at least as early as 2008, Mr. Foti has used the NUTRALIFE mark continuously in interstate, territorial, and international commerce in connection with the sale and marketing of International Home Product, Inc.'s goods, namely, cookware, pots and pans, steamers, frying pans, skilletts, and cooking strainers. Mr. Foti's use of the NUTRALIFE mark in commerce includes sales in Puerto Rico, Florida, California, Texas, Wisconsin, Panama, Mexico, and Dominican Republic, among other geographic areas.

9. The NUTRALIFE registration is valid, subsisting, and in full force and effect, and constitutes prima facie evidence of the validity of the mark and of Mr. Foti's exclusive right to use it on and in connection with his goods.

10. The NUTRALIFE registration is proof of the inherent distinctiveness of the NUTRALIFE mark.

11. Petitioner's request is unsupported and contrary to well-settled federal trademark law, which rewards those who first seek federal registration.

12. Mr. Foti is entitled to exclusive use of the NUTRALIFE mark throughout the territory covered by the Lanham Act because he was the first to register the mark before the USPTO and his registration is valid, subsisting, and in full force and effect.

WHEREFORE, Mr. Foti requests that the Petition to Cancel be denied.

I hereby certify that this Amended Answer to "Petition to Cancel" is being transmitted via the Electronic System for Trademark Trials and Appeals (ESTTA) on the PTOnet to the United States Patent and Trademark Office on the date shown below and that an exact copy is being noticed to all counsel of record.

Respectfully submitted.

Dated: November 8, 2013

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