

ESTTA Tracking number: **ESTTA530536**

Filing date: **04/04/2013**

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 | Swing Aerobics Licensing, Inc. | | |
| Entity | Corporation | Citizenship | Texas |
| Address | PO Box 56507 Houston, TX 77256 UNITED STATES | | |

| | | | |
|----------------------|--|--|--|
| Attorney information | John S. Egbert Egbert Law Offices, PLLC 1314 Texas, 21st Floor Houston, TX 77002 UNITED STATES mail@egbertlawoffices.com Phone:713-224-8080 | | |
|----------------------|--|--|--|

Registration Subject to Cancellation

| | | | |
|-----------------|---|-------------------|------------|
| Registration No | 3503434 | Registration date | 09/23/2008 |
| Registrant | BIO KING, INC. 1541 WILSHIRE BOULEVARD, #502 LOS ANGELES, CA 90017 UNITED STATES | | |

Goods/Services Subject to Cancellation

| |
|---|
| Class 005. First Use: 2007/10/15 First Use In Commerce: 2007/10/15 All goods and services in the class are cancelled, namely: Nutrition Supplement |
|---|

Grounds for Cancellation

| | |
|--------------------------------------|----------------------------|
| Abandonment | Trademark Act section 14 |
| Priority and likelihood of confusion | Trademark Act section 2(d) |

Mark Cited by Petitioner as Basis for Cancellation

| | | | |
|----------------------|-----------------------|-----------------------|------------|
| U.S. Application No. | 85795447 | Application Date | 12/05/2012 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | PARENT ESSENTIAL OILS | | |

| | |
|---------------------|--|
| Design Mark | PARENT ESSENTIAL OILS |
| Description of Mark | NONE |
| Goods/Services | Class 005. First use: First Use: 2007/07/20 First Use In Commerce: 2007/07/25 Dietary supplements |

| | |
|-------------|--|
| Attachments | 85795447#TMSN.jpeg (1 page)(bytes) 2529-9 Petition for Cancellation.pdf (10 pages)(616770 bytes) |
|-------------|--|

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 | /2529-9/ |
| Name | John S. Egbert |
| Date | 04/04/2013 |

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

In the Matter of Registration No. 3,503,434
Registered on September 23, 2008

| | | |
|---------------------------------|---|------------------------|
| Swing Aerobics Licensing, Inc., | § | |
| | § | |
| Petitioner, | § | |
| | § | |
| v. | § | Cancellation No. _____ |
| | § | |
| Bio King, Inc., | § | |
| | § | |
| Registrant. | § | |

PETITION FOR CANCELLATION

The Petitioner, Swing Aerobics Licensing, Inc. (hereinafter "Petitioner"), a Corporation of Texas, having an address of PO Box 56507, Houston, Texas 77256, believes it is and will be damaged by the continued registration of U.S. Registration No. 3,503,434 on the Principal Register and hereby petitions for cancellation of said registration.

As grounds for this petition, it is alleged that:

1. Upon information and belief, Registrant Bio King, Inc. (hereinafter "Registrant") is a Corporation of California having an address of 1541 Wilshire Boulevard, #502, Los Angeles, California 90017. Such corporation is listed as the owner of the "PARENT AND DESIGN" Mark, U.S. Registration No. 3,503,434, registered on the Principal Register on September 23, 2008 for "Nutritional supplement" in International Class 005. Registrant claims an alleged date of first use in commerce of October 15, 2007.

2. Petitioner is owner of an application for the "PARENT ESSENTIAL OILS" mark, U.S. Application No. 85/795,447, filed on December 5, 2012 for use on "Dietary supplements" in

International Class 005. A true copy of the records from the USPTO electronic database showing the status and title for said application is attached hereto as Exhibit A.

3. Registration of Petitioner's "PARENT ESSENTIAL OILS" Application, Serial No. 85/795,447, has already been refused by the US Patent and Trademark Office by reason of the existence of Registrant's similar "PARENT AND DESIGN" mark on the Principal Register. For this reason, Petitioner has a reasonable belief that the continued existence of Registrant's "PARENT AND DESIGN" registration will prevent the application for Petitioner's "PARENT ESSENTIAL OILS" Mark from continuing to registration.

COUNT 1 - ABANDONMENT OF REGISTRANT'S MARK

4. Upon information and belief, Registrant has abandoned the trademark "PARENT AND DESIGN", U.S. Reg. No. 3,503,434, by discontinuing its use of the mark with no intent to resume such use.

5. Upon information and belief, Registrant abandoned its "PARENT AND DESIGN" mark long prior to the filing of this Petition for Cancellation and has no intention of using said mark in the future.

COUNT 2 - PRIORITY AND LIKELIHOOD OF CONFUSION

6. Commencing long prior to Registrant's alleged date of first use of Registrant's Mark in U.S. commerce of October 15, 2007, and prior to the filing date of Registrant's Mark, Petitioner has engaged, and is now engaged in the manufacture, distribution, sale, advertising and promotion in interstate commerce of goods in International Classes 005 under Petitioner's "PARENT ESSENTIAL OILS" mark.

7. Use of Petitioner's "PARENT ESSENTIAL OILS" mark has been continuous, exclusive, public, and substantial since a date of first use in U.S. commerce at least as early as June, 2006.

8. Registrant's Mark is confusingly similar to Petitioner's "PARENT ESSENTIAL OILS" mark because:

- a. Registrant's mark is confusingly similar in appearance to Petitioner's "PARENT ESSENTIAL OILS" mark;
- b. Registrant's mark is confusingly similar in sound to Petitioner's "PARENT ESSENTIAL OILS" mark;
- c. Registrant's mark is identical in connotation to Petitioner's "PARENT ESSENTIAL OILS" mark;
- d. the goods of Petitioner and the goods of Registrant are identical and are marketed through the same channels of trade and to the same general class of consumers; and
- e. Petitioner's "PARENT ESSENTIAL OILS" mark enjoys a high level of distinctiveness.

9. As a result of Petitioner's promotion and use of Petitioner's "PARENT ESSENTIAL OILS" mark in connection with its goods, the trade and purchasing public have come to know and recognize Petitioner's "PARENT ESSENTIAL OILS" mark and have associated the same with Petitioner and Petitioner's goods.

10. Petitioner's "PARENT ESSENTIAL OILS" mark constitutes the lawful, valued, subsisting, and exclusive property of Petitioner. As a result of the high quality of Petitioner's goods,

and the extensive sales and advertising made under Petitioner's "PARENT ESSENTIAL OILS" mark, the aforementioned mark has become an intrinsic and essential part of the valuable goodwill and property of Petitioner and are recognizable and associated by the public as a symbol identifying and distinguishing Petitioner's goods as those of exceptional quality.

11. Registrant's Mark so resembles Petitioner's "PARENT ESSENTIAL OILS" mark as to be likely to cause confusion or mistake, to suggest a connection, or to deceive purchasers into believing that Registrant's goods originate with Petitioner and/or are endorsed or sponsored by the Petitioner, and/or that Registrant and/or its goods are otherwise affiliated with the Petitioner and its goods.

12. The continuing use by Registrant of the confusingly similar Registrant's Mark will inexorably have an adverse effect upon the value of Petitioner's "PARENT ESSENTIAL OILS" mark. If this Cancellation is not sustained, any defect, objection to, or fault found with Registrant's goods sold under Registrant's Mark would necessarily reflect on and seriously injure the valuable goodwill and reputation that Petitioner has established for its goods.

13. As a result of Petitioner's prior use of Petitioner's "PARENT ESSENTIAL OILS" mark on closely related goods, Registrant's mark is not allowed to continue its registration under Section 2(d) of the Trademark Act and should be cancelled in this proceeding accordingly.

14. Based on the foregoing, the continued registration of U.S. Registration No. 3,503,434 for "PARENT AND DESIGN" for use on goods in International Class 005 has, and will continue to, cause injury and damage to Petitioner. Petitioner believes it will be free to register its "PARENT ESSENTIAL OILS" mark on the Principal Register if U.S. Registration No. 3,503,434 is cancelled.

WHEREFORE, Petitioner respectfully requests that the Trademark Trial and Appeal Board cancel U.S. Registration No. 3,503,434.

Petitioner hereby submits the requisite filing fee of \$300.00 for the Petition to Cancel Registrant's registration in International Class 005.

Respectfully submitted,

April 4, 2013
Date

/2529-9/
John S. Egbert
Reg. No. 30,627
Kevin S. Wilson
Michael F. Swartz

Egbert Law Offices, PLLC
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ATTORNEYS FOR PETITIONER
Swing Aerobics Licensing, Inc.

Exhibit "A"

Generated on: This page was generated by TSDR on 2013-04-04 11:10:26 EDT

Mark: PARENT ESSENTIAL OILS

PARENT ESSENTIAL OILS

US Serial Number: 85795447

Application Filing Date: Dec. 05, 2012

Register: Principal

Mark Type: Trademark

Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Feb. 27, 2013

Mark Information

Mark Literal Elements: PARENT ESSENTIAL OILS

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

Claimed Ownership of US [3434659](#)

Registrations:

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks "*" identify additional (new) wording in the goods/services.

For: Dietary supplements

International Class: 005 - Primary Class

U.S Class: 006, 018, 044, 046, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 20, 2007

Use in Commerce: Jul. 25, 2007

Basis Information (Case Level)

| | | |
|--------------------|------------------------|-----------------|
| Filed Use: Yes | Currently Use: Yes | Amended Use: No |
| Filed ITU: No | Currently ITU: No | Amended ITU: No |
| Filed 44D: No | Currently 44D: No | Amended 44D: No |
| Filed 44E: No | Currently 44E: No | Amended 44E: No |
| Filed 66A: No | Currently 66A: No | |
| Filed No Basis: No | Currently No Basis: No | |

Current Owner(s) Information

Owner Name: Swing Aerobics Licensing, Inc.

Owner Address: P.O. Box 56507
Houston, TEXAS 77256
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: TEXAS

Attorney/Correspondence Information

Attorney of Record

Attorney Name: John S. Egbert

Docket Number: 2529-8

Attorney Primary Email mail@egbertlawoffices.com
Address:

Attorney Email Yes
Authorized:

Correspondent

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HOUSTON, TEXAS 77002-6577
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Phone: 713-224-8080

Fax: 713-223-4873

Correspondent e-mail: mail@egbertlawoffices.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

| Date | Description | Proceeding Number |
|---------------|--|-------------------|
| Feb. 27, 2013 | NOTIFICATION OF NON-FINAL ACTION E-MAILED | 6325 |
| Feb. 27, 2013 | NON-FINAL ACTION E-MAILED | 6325 |
| Feb. 27, 2013 | NON-FINAL ACTION WRITTEN | 74782 |
| Feb. 22, 2013 | ASSIGNED TO EXAMINER | 74782 |
| Dec. 16, 2012 | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | |
| Dec. 08, 2012 | NEW APPLICATION ENTERED IN TRAM | |

TM Staff and Location Information

TM Staff Information

TM Attorney: BRACEY, KAREN E

Law Office Assigned: LAW OFFICE 116

File Location

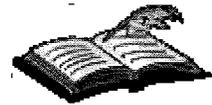
Current Location: TMO LAW OFFICE 116 - EXAMINING
ATTORNEY ASSIGNED

Date in Location: Feb. 27, 2013



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No assignment has been recorded at the USPTO

For Serial Number: 85795447

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.3.2
Web interface last modified: July 10, 2012 v.2.3.2

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