

ESTTA Tracking number: **ESTTA537846**

Filing date: **05/14/2013**

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	Tone It Up, LLC		
Entity	Limited Liability Company	Citizenship	California
Address	934 Hermosa Ave. #13 Hermosa Beach, CA 90254 UNITED STATES		

Attorney information	Raphael A. Gutierrez Law Office of Raphael A. Gutierrez 11355 W. Olympic Blvd. Suite 106 Los Angeles, CA 90064 UNITED STATES rafa@rgattorney.com, tmdocketing@gmail.com
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Registration Subject to Cancellation

Registration No	3796090	Registration date	06/01/2010
Registrants	Campoli, Tracy E 3421 42st #3r Long Island City, NY 11101 UNITED STATES Farthing, Jennifer 378 State St Brooklyn, NY 11217 UNITED STATES		

Goods/Services Subject to Cancellation

Class 041. First Use: 2007/07/07 First Use In Commerce: 2007/07/07 All goods and services in the class are cancelled, namely: Conducting workshops and seminars in personal awareness; Conducting workshops and seminars in self awareness; Conducting workshops and seminars in Physical Fitness; Education services, namely, providing live and on-line workshops and classes in the field of Physical Fitness; Physical fitness conditioning classes; Physical fitness consultation; Physical fitness instruction; Providing an on-line computer database featuring information regarding exercise and fitness before and after pregnancy; Providing assistance, personal training and physical fitness consultation to corporate clients to help their employees make physical fitness, strength, conditioning, and exercise alterations in their daily living; Providing assistance, personal training and physical fitness consultation to individuals to help them make physical fitness, strength, conditioning, and exercise improvement in their daily living; Providing on-line training courses, seminars, and workshops in the field of Physical Fitness; Workshops and seminars in the field of Physical Fitness

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	1020.410 Petition to Cancel.pdf(39107 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	/Raphael A. Gutierrez/
Name	Raphael A. Gutierrez
Date	05/14/2013

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

<p><i>In re Reg. No. 3,796,090 for the mark BUDDHA BELLY 2 BEACH BABE</i></p> <p>TONE IT UP, LLC,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>TRACY CAMPOLI and JENNIFER FARTHING, together d/b/a THE BUDDHA BABES,</p> <p style="text-align: center;">Registrants.</p>	<p>Cancellation No. _____</p> <p><u>Petition to Cancel</u></p>
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PETITION TO CANCEL

Tone It Up, LLC (“Petitioner”), a California limited liability company having an address of 934 Hermosa Ave. #13, Hermosa Beach, CA 90254 brings this Petition to Cancel against Reg. No. 3,796,090 for the mark BUDDHA BELLY 2 BEACH BABE (“’090 Registration”) owned by Tracy Campoli and Jennifer Farthing, together doing business as The Buddha Babes (collectively referred to as “Registrants”) having addresses of 3421 42st #3r, Long Island City, NY 11101 (Campoli) and 378 State St, Brooklyn, NY 11217 (Farthing).

Petitioner believes it is being damaged by the registration of the mark shown in the Registration and hereby petitions to Cancel the same.

As grounds for the Cancellation, Petitioner alleges as follows:

1. Petitioner filed an application for the mark BEACH BABE (“Petitioner’s Mark”) on January 23, 2012 for “Digital materials, namely, DVDs featuring fitness” in International Class 9, which was assigned Serial No. 85/523,262.
2. On April 30, 2012, an Office Action issued refusing registration of Petitioner’s Mark pursuant to Section 2(d) of the Lanham Act. The Examining Attorney

believed Petitioner's Mark was likely to cause confusion with the mark in the '090 Registration, BUDDHA BELLY 2 BEACH BABE ("Cited Mark"), which was registered in connection with "Conducting workshops and seminars in personal awareness; Conducting workshops and seminars in self awareness; Conducting workshops and seminars in Physical Fitness; Education services, namely, providing live and on-line workshops and classes in the field of Physical Fitness; Physical fitness conditioning classes; Physical fitness consultation; Physical fitness instruction; Providing an on-line computer database featuring information regarding exercise and fitness before and after pregnancy; Providing assistance, personal training and physical fitness consultation to corporate clients to help their employees make physical fitness, strength, conditioning, and exercise alterations in their daily living; Providing assistance, personal training and physical fitness consultation to individuals to help them make physical fitness, strength, conditioning, and exercise improvement in their daily living; Providing on-line training courses, seminars, and workshops in the field of Physical Fitness; Workshops and seminars in the field of Physical Fitness," which shall be referred to as the "Cited Services."

3. On October 30, 2012, Petitioner submitted arguments that its mark was not likely to cause confusion with the Cited Mark. The Examining Attorney was not persuaded and issued a FINAL refusal for Petitioner's Mark on November 12, 2012.

4. Petitioner is being damaged by the '090 Registration, as it is preventing registration of Petitioner's Mark. Additionally, on information and belief, Petitioner submits that Registrants have abandoned the Cited Mark in that they are not using, and do not intend to resume use of, that mark.

5. Petitioner hereby Petitions to Cancel the Cited Mark pursuant to 15 U.S.C. § 1064(3) and TMEP § 716.02(a) on the grounds that the Cited Mark has been abandoned.

COUNT 1: ABANDONMENT

6. Petitioner realleges paragraphs 1-5.

7. After it became aware of the Cited Mark, Petitioner began investigating the mark, including whether it was still in use. Petitioner performed research on the

Internet and could not find any current uses of the Cited Mark in connection with the Cited Services.

8. Petitioner found links to Registrant's website, www.buddhabelly2beachbabe.com, but error messages indicated that the website did not exist. A review of WhoIs information revealed that the website was "deleted and available again." The most recent archived page of the website on Archive.org was from February 2011.

9. Petitioner also found Registrants' page on blogspot.com, bb2bbfitness.blogspot.com, but the most recent entry was from January 2011.

10. Petitioner then hired a private investigative firm, Marksmen, to conduct an investigation to determine if the Cited Mark was still in use.

11. Marksmen produced a report indicating it did not find any uses of the Cited Mark that were more current than what Petitioner had found. Marksmen also contacted Ms. Campoli, one of the individuals who is a Registrant, who confirmed that the Cited Mark is no longer in use.

12. Based on its own investigation and the report prepared by Marksmen, Petitioner believes that Registrants have abandoned use of the Cited Mark and do not have an intention to resume that use, pursuant to 15 U.S.C. § 1127.

WHEREFORE, Petitioner prays that the Cited Mark be cancelled on the grounds of abandonment and the Petition to Cancel be sustained in Petitioner's favor.

Date: May 14, 2013.

Respectfully submitted,

/Raphael A. Gutierrez/
Raphael A. Gutierrez
Attorney for Petitioner

Law Office of Raphael A. Gutiérrez
11355 W. Olympic Blvd. Suite 106
Los Angeles, CA 90064
Phone: 310-966-1800
Email: rafa@rgattorney.com

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their email address of record and via first class mail at the addresses of record this 14th day of May 2013.

Tracy Campoli
3421 42st #3r
Long Island City, NY 11101
tcampoli@gmail.com

Jennifer Farthing
378 State St.
Brooklyn, NY 11217

/Raphael A. Gutiérrez /
Raphael A. Gutiérrez