

ESTTA Tracking number: **ESTTA549881**

Filing date: **07/23/2013**

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	Mediverse International Inc.		
Entity	Corporation	Citizenship	California
Address	20 E. Foothill Blvd. Arcadia, CA 91006 UNITED STATES		

Attorney information	Ellie Hourizadeh McDermott Will & Emery LLP 2049 Century Park East, Suite 3800 Los Angeles, CA 90077 UNITED STATES ehourizadeh@mwe.com Phone:3105519321		
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**Registration Subject to Cancellation**

Registration No	2926406	Registration date	02/15/2005
Registrant	Daniel Rogers Labs, LLC 76 N. Maple Avenue, Suite #268 Ridgewood, NJ 07450 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 005. First Use: 2001/10/10 First Use In Commerce: 2001/10/17 All goods and services in the class are cancelled, namely: Dietary Supplement
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**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Attachments	Petition to Cancel.pdf(12857 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	/s/
Name	Ellie Hourizadeh

Date	07/23/2013
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MEDIVERSE INTERNATIONAL INC., )  
)  
Petitioner, )  
)  
v. )  
)  
DANIEL ROGERS LABS, LLC )  
)  
Registrant. )

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

RE: Registration No. 2926406  
MARK: UTOPIA  
Filed: January 29, 2004  
Registration Date: February 15, 2005

**PETITION TO CANCEL**

Mediverse International Inc. is a California corporation with a principal place of business at 20 E. Foothill Blvd., Arcadia, CALIFORNIA 91006 (“Mediverse”). Mediverse files this Petition to Cancel on the grounds that (i) the application for the Mark contains knowingly false material misrepresentations of fact by the Registrant, and (ii) the Mark is likely to cause consumer confusion with respect to Petitioner’s mark.

1. On July 28, 2012, Mediverse filed an intent to use application to register the mark UTOPIA in connection with “Nutritional products and supplements; dietary supplements; baby formula, and sports drinks” in International Classes 6, 18, 44, 46, 51, and 52, Application No. 85680319 (“Mediverse Application”). On November 12, 2012, the USPTO issued an office action refusing registration of the Mediverse Application because of a possible likelihood of confusion with Registration No. 2926406 (“Disputed Registration”).

2. According to the Disputed Registration, Registrant alleges use of the UTOPIA mark in interstate commerce as of October 17, 2001. The application includes a declaration signed by Dan Trimper, Executive Vice President of Daniel Rogers Labs, LLC, that states under penalty of perjury that the as of the date of filing, “all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.”

3. Upon information and belief and based on online research conducted by Mediverse, the verified statement signed by Registrant and submitted with and in connection with the application for the Disputed Registration contains knowingly false material representations of fact, and therefore constitutes fraud in the procurement of the registration.

4. Registrant knew that the date of first use stated in the application for the Disputed Registration was not accurate or true. Registrant has not and is not currently using the UTOPIA mark. But for the material and willful misrepresentations by Registrant, the Disputed Registration would not have been issued.

5. Registrant has also failed to file the requisite evidence of continued use for the Disputed Registration. Upon information and belief, Registrant failed to file this requisite document because Registrant has not and is not using the UTOPIA mark as alleged in the application filed by Registrant for the Disputed Registration. Even if Registrant made use of the UTOPIA mark for a brief period of time, Registrant has since abandoned use of the UTOPIA mark.

6. Additionally, according to the New Jersey Secretary of State, the charter for Registrant has been revoked. See Exhibit 1. Accordingly, on information and belief, Registrant is not permitted to operate its business.

7. Because the UTOPIA mark that is the subject of the Disputed Registration is identical to Mediverse's Mark and used in connection with identical goods, namely dietary supplements, via identical or similar channels of trade, the registration sought by Registrant should be refused because it is likely to cause confusion among consumers.

8. Petitioner is the rightful owner of the UTOPIA mark. Registration and use of the UTOPIA mark by Registrant will interfere with Petitioner's use and registration of its UTOPIA mark, is likely to lead to consumer confusion.

WHEREFORE, Petitioner prays that Registration No. 2926406 be cancelled that no registration be issued to Registrant, and that this opposition be sustained in favor of Petitioner.

The requisite filing fee prescribed by 37 C.F.R. § 2.6(a)(17) should be charged to Deposit Account No. 501946. If there are any additional fees due in connection with this Petition to Cancel, they should also be charged to Deposit Account No. 501946, and any excess fees should be credited to same. All correspondence relating to this matter should be directed to the undersigned attorneys for Petitioner.

Respectfully submitted,

Dated: July 22, 2013

By: \_\_\_\_\_/s/\_\_\_\_\_  
Ellie Hourizadeh  
Attorneys for Mediverse International Inc.

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