

ESTTA Tracking number: **ESTTA556413**

Filing date: **08/27/2013**

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	N.V.E., Inc.		
Entity	Corporation	Citizenship	New Jersey
Address	15 Whitehall Road Andover, NJ 07821 UNITED STATES		

Attorney information	Brian M. Gaynor, Esq. Nicoll Davis & Spinella LLP 95 Route 17 South, Suite 316 Paramus, NJ 07652 UNITED STATES efiling@ndslaw.com Phone:2017121616		
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Registration Subject to Cancellation

Registration No	2122924	Registration date	12/23/1997
Registrant	MESKO, CHARLES A. 12395 LANCASTER STREET MILLERSPORT, OH 43046 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 1988/08/29 First Use In Commerce: 1988/08/29 All goods and services in the class are cancelled, namely: homeopathic pharmaceuticals for use in the treatment of hangover, indigestion and stress

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Petition for Cancellation (abandonment) - HANGOVER HELPER.pdf(84085 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	/brian gaynor/
Name	Brian M. Gaynor, Esq.

Date	08/27/2013
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

N.V.E., INC.,

Petitioner,

v.

CHARLES A. MESKO,

Registrant.

In re Reg. No. 2122924

Mark: HANGOVER HELPER AND
DESIGN

Cancellation No.:

PETITION FOR CANCELLATION
PURSUANT TO 15 U.S.C. SECTION 1064(3)

In the matter of trademark Reg. No. 2122924, for HANGOVER HELPER AND DESIGN, as a trademark for “homeopathic pharmaceuticals for use in the treatment of hangover, indigestion and stress.” in International Class 5, registered on December 23, 1997; and said registration owned by Registrant, Charles A. Mesko (“Registrant”), an individual with an address of 12395 Lancaster Street, Millersport, Ohio 43046;

N.V.E., Inc., (“NVE”), a New Jersey corporation with an address of 15 Whitehall Road, Andover, New Jersey 07821, believes that it will be damaged by the continued registration of HANGOVER HELPER AND DESIGN, as Registrant’s Mark, and hereby petitions to cancel said registration pursuant to 15 U.S.C. Sec. 1064 (Trademark Act of 1946, Sec. 14).

As grounds for cancellation, it is alleged that:

COUNT I
ABANDONMENT

1. Petitioner is the owner of the mark VITAMIN SHOT HANGOVER HELPER (“Petitioner’s Mark”) as a trademark, as applied to a wide range of goods, including, but not

limited to “Vitamins, dietary and nutritional supplements; nutritionally fortified energy drinks; nutritionally fortified water,” and “Carbonated drinking waters, flavored waters, and other non-alcoholic beverages, namely, sports drinks, energy drinks, fruit drinks, vegetable drinks.”

2. Reg. No. 2122924, for HANGOVER HELPER AND DESIGN, issued on December 23, 1997, to Hangover Helper, Inc.

3. On December 18, 2007, Hangover Helper, Inc. assigned all rights, title and interest in Reg. No. 2122924, for HANGOVER HELPER AND DESIGN, to Registrant Charles A. Mesko.

4. Upon information and belief, Registrant is an individual with an address of 12395 Lancaster Street, Millersport, Ohio 43046.

5. Upon information and belief, Registrant has abandoned the trademark HANGOVER HELPER AND DESIGN, Reg. No. 2122924. The Petition for Cancellation is therefore, appropriate under Section 14(3) of the Lanham Act, 15 U.S.C. Section 1064(3).

6. Upon information and belief, Registrant has discontinued use of the mark covered by Reg. No. 2122924, HANGOVER HELPER AND DESIGN, in International Class 5 for at least three (3) years.

7. Upon information and belief, Registrant intends not to resume use of the mark covered by Reg. No. 2122924, HANGOVER HELPER AND DESIGN.

8. Registrant’s failure to make use of the Mark in the United States for a period of three (3) years is prima facie evidence of abandonment.

9. Registrant has therefore abandoned the Mark HANGOVER HELPER AND DESIGN, Reg. No. 2122924 in International Class 5 in the United States.

10. Petitioner filed a U.S. trademark application, Ser. No. 77912419, to register VITAMIN SHOT HANGOVER HELPER for “Vitamins, dietary and nutritional supplements; nutritionally fortified energy drinks; nutritionally fortified water,” and “Carbonated drinking waters, flavored

waters, and other non-alcoholic beverages, namely, sports drinks, energy drinks, fruit drinks, vegetable drinks” with the United States Patent and Trademark Office (“USPTO”).

11. The application filed on behalf of Petitioner to register VITAMIN SHOT HANGOVER HELPER was refused registration by the USPTO on the grounds that the mark of Petitioner so resembles Registrant’s Mark for Registrant’s Goods, as shown in Reg. No. 2122924, as to be likely to cause confusion, or to cause mistake, or to deceive [Section 2(d) of the Trademark Act of 1946, 15 U.S.C. Sect. 1052(d)].

12. The continued existence of the Mark creates a serious cloud on Petitioner’s continued right to use its mark VITAMIN SHOT HANGOVER HELPER, or any other variations thereof, for the goods set forth in its application, namely “Vitamins, dietary and nutritional supplements; nutritionally fortified energy drinks; nutritionally fortified water,” and “Carbonated drinking waters, flavored waters, and other non-alcoholic beverages, namely, sports drinks, energy drinks, fruit drinks, vegetable drinks.”

13. Petitioner believes that it is and will be damaged by the continued registration of the Mark to Registrant.

WHEREFORE, N.V.E., Inc., prays that Registrant’s Mark HANGOVER HELPER AND DESIGN, Reg. No. 2122924, be canceled in its entirety.

DATED: August 27, 2013

Respectfully submitted,
Attorneys for Petitioner

By: /s/ brian gaynor
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petition for Cancellation was forwarded by first class postage pre-paid mail by depositing the same with the U.S. Postal Service on this 27th day of August, 2013 to the attorneys for the Registrant at the following address:

Kurt A. Summe
Wood, Herron & Evans, LLP
441 Vine St.
2700 Carew Tower
Cincinnati, Ohio 45202

DATED: August 27, 2013

/s/ brian gaynor
Brian M. Gaynor