

ESTTA Tracking number: **ESTTA591667**

Filing date: **03/10/2014**

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	H-Health Supermart Corp.		
Entity	Corporation	Citizenship	Arizona
Address	7428 E. Karen Drive Scottsdale, AZ 85260 UNITED STATES		

Attorney information	Marvin A. Glazer Cahill Glazer PLC 2141 E. Highland Ave., Suite 155 Phoenix, AZ 85016-4762 UNITED STATES mglazer@cvglaw.com Phone:6029567000
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Registration Subject to Cancellation

Registration No	3965934	Registration date	05/24/2011
Registrants	Pro M.A.S.S. 9536 Princeton Sq. Blvd. S., #1907 Jacksonville, FL 32256 FL Glover, Chris 9536 Princeton Sq. Blvd. S. #1907 Jacksonville, FL 32256 USX		

Goods/Services Subject to Cancellation

Class 005. First Use: 2010/03/11 First Use In Commerce: 2010/03/11 All goods and services in the class are cancelled, namely: Dietary and nutritional supplements; Dietary and nutritional supplements for endurance sports; Dietary beverage supplements for human consumption in liquid anddry mix form for therapeutic purposes; Dietary food supplements; Dietary supplements; Dietary supplements for human consumption; Food supplements; Health food supplements; Meal replacement and dietary supplement drink mixes; Nutritional supplement in the nature of a nutrient-dense, protein-based drink mix; Nutritionalsupplements; Powdered nutritional supplement drink mix; Protein supplements
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Grounds for Cancellation

Abandonment	Trademark Act section 14
Related Proceedings	Petitioner is also filing a Petition to Cancel related Reg. No. 3,965,944

Attachments	Petition_to_Cancel_Hydra_Series_Reg_No_3965934.pdf(87084 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	/Marvin A. Glazer/
Name	Marvin A. Glazer
Date	03/10/2014

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

In the matter of trademark Registration No. 3,965,934
For the mark HYDRA SERIES
Date registered: May 24, 2011
Intl. Class: 005

Hi-Health Supermart Corp.,
Petitioner,

v.

Chris Glover, an individual, and
Pro M.A.S.S., a Florida limited liability company,
Registrants.

PETITION TO CANCEL

Identify of Petitioner:

Hi-Health Supermart Corp., an Arizona corporation,
7428 E. Karen Drive
Scottsdale, Arizona 85260

To the best of Petitioner's knowledge, the name and address of the current owner(s) of U.S. Trademark Registration No. 3,965,934 are:

Chris Glover, 9536 Princeton Sq. Blvd. S. #1907, Jacksonville, FL 32256; and
Pro M.A.S.S. (Florida LLC) 9536 Princeton Sq. Blvd. S. #1907, Jacksonville, FL 32256.

Petitioner believes that it will be damaged by the above-identified registration, and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. Petitioner, Hi-Health Supermart Corp., is an Arizona corporation having its principal offices at 7428 E. Karen Drive, Scottsdale, Arizona 85260.

2. Petitioner owns and operates approximately 45 retail health food stores in the State of Arizona which market and sell a variety of health-related goods, including nutritional and dietary food supplements.

3. Petitioner owns and operates an online retail health food/nutrition store at the web site www.hihealth.com which markets and sells health foods and nutritional supplements throughout the United States.

4. Petitioner was formed in 1972, and opened its first retail health food store in Sun City, Arizona in 1972.

5. Petitioner has conducted retail telephone-order and retail mail-order services in the field of health foods and nutritional supplements throughout the United States since at least 1987.

6. On July 12, 2013, Petitioner filed U.S. trademark application No. 86/009,160, seeking federal registration of the trademark "HYDRA" for dietary supplemental drinks in Intl. Cl. 005, and for flavored bottled water, and flavored enhanced water, in Intl Cl. 032.

7. On September 11, 2013, the Trademark Office issued an Office Action in U.S. trademark application No. 86/009,160, including a Section 2(d) refusal. The Trademark Examining Attorney based such Section 2(d) refusal upon an alleged likelihood of confusion with the marks in U.S. Registration Nos. 3,965,944 and 3,965,934 (the latter Registration is the mark sought to be canceled by the present Petition).

8. The Trademark Examining Attorney concluded within the aforementioned September 11, 2013 Office Action that consumer confusion as to source would likely result from the contemporaneous registrations of Petitioner's and Registrant's marks as used on or in connection with the parties' respective goods, and therefore refused registration of Petitioner's mark.

9. On July 12, 2013, Petitioner filed U.S. intent-to-use trademark application No.

86/009,258, seeking federal registration of the trademark “HYDRA” for bottled drinking water in Intl. Cl. 032.

10. On September 11, 2013, the Trademark Office issued an Office Action in U.S. trademark application No. 86/009,258, including a Section 2(d) refusal. The Trademark Examining Attorney based such Section 2(d) refusal upon an alleged likelihood of confusion with the marks in U.S. Registration Nos. 3,965,944 and 3,965,934 (the latter Registration is the mark sought to be canceled by the present Petition).

11. The Trademark Examining Attorney concluded within the aforementioned September 11, 2013 Office Action for application No. 86/009,258, that consumer confusion as to source would likely result from the contemporaneous registrations of Petitioner’s and Registrant’s marks as used on or in connection with the parties’ respective goods, and therefore refused registration of Petitioner’s mark.

12. On July 12, 2013, Petitioner filed U.S. intent-to-use trademark application No. 86/009,204, seeking federal registration of the trademark “HYDRA” for powdered nutritional supplement drink mix in Intl. Cl. 005.

13. On September 11, 2013, the Trademark Office issued an Office Action in U.S. trademark application No. 86/009,204, including a Section 2(d) refusal. The Trademark Examining Attorney based such Section 2(d) refusal upon an alleged likelihood of confusion with the marks in U.S. Registration Nos. 3,965,944 and 3,965,934 (the latter Registration is the mark sought to be canceled by the present Petition).

14. The Trademark Examining Attorney concluded within the aforementioned September 11, 2013 Office Action for application No. 86/009,204, that consumer confusion as to source would likely result from the contemporaneous registrations of Petitioner’s and Registrant’s marks as used on or in connection with the parties’ respective goods, and therefore refused registration of Petitioner’s mark.

15. Registration of the mark HYDRA SERIES under Reg. No. 3,965,934 is clearly damaging Petitioner because the Trademark Examining Attorney is relying, at least in part, on Reg. No. 3,965,934 as a basis for refusing registration of Petitioner’s

mark HYDRA in conjunction with the goods described above.

16. All three of U.S. trademark application Nos. 86/009,160; 86/009,258; and 86/009,204; are still pending before the Trademark Office, and Petitioner is continuing its efforts to obtain federal registration of the mark HYDRA for the goods specified in such pending applications.

17. Upon information and belief, U.S. Trademark Reg. No. 3,965,934 (the Registration sought to be canceled by the present Petition) is currently owned jointly by Chris Glover, 9536 Princeton Sq. Blvd. S. #1907, Jacksonville, FL 32256; and Pro M.A.S.S. (Florida LLC), 9536 Princeton Sq. Blvd. S. #1907, Jacksonville, FL 32256.

18. Upon information and belief, joint owners Chris Glover and Pro M.A.S.S. have discontinued all use of the mark HYDRA SERIES upon the goods identified in Registration No. 3,965,934, with an intent not to resume such use in the ordinary course of trade.

19. An employee of Petitioner attempted to purchase a “HYDRA SERIES” branded nutritional supplement product from Registrants by placing an order for such product over the Internet; while payment for such product was made, no product was ever received, and no communications were ever received from Registrants as to why no product was received.

20. In the past, Registrants promoted “HYDRA SERIES” branded nutritional supplement products using a website having the domain address www.promuscularnutrition.com.

21. Today, the domain address www.promuscularnutrition.com is not being used, and is available for purchase.

22. Upon information and belief, joint owners Chris Glover and Pro M.A.S.S. have abandoned the mark HYDRA SERIES with respect to all goods identified within Registration No. 3,965,934, and all rights therein, by discontinuing use of such mark upon the goods identified in Registration No. 3,965,934, with an intent not to resume such use.

23. Abandonment of a trademark through nonuse with an intent not to resume use

is sufficient grounds for the Trademark Office to cancel the Registration for such trademark.

Wherefore, Petitioner requests the Trademark Office to cancel Registration No. 3,965,934 in its entirety, and relative to all goods specified therein, and further requests that this Petition for Cancellation be sustained in favor of Petitioner.

Payment in the amount of Three Hundred Dollars (\$300.00) accompanies this Petition for Cancellation in payment of the fee set forth in 37 C.F.R. §2.6(a)(16.).

Respectfully submitted this 10th day of March, 2014

By: Marvin A. Glazer
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Petition for Cancellation was forwarded by first-class mail, postage prepaid, on this 10th day of March, 2014, to Registrants at:

Chris Glover/Pro M.A.S.S.
9536 Princeton Sq. Blvd. S. #1907
Jacksonville, FL 32256

and to the current correspondence address on record for U.S. Trademark Reg. No. 3,965,934, namely:

Jo-Anne Yau
Yau Law
10752 Deerwood Park Blvd., South Suite 100
Jacksonville, FL 32256

By: Marvin A. Glazer
Marvin A. Glazer, Attorney for Petitioner