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Filing date: **06/10/2014**

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	Doctors Online Services, LLC, dba Fruition		
Entity	limited liability company	Citizenship	Colorado
Address	201 Fillmore Street # 200 Denver, CO 80206 UNITED STATES		

Attorney information	Katherine Keating Bryan Cave LLP 560 Mission Street, 25th Floor San Francisco, CA 94105-2994 UNITED STATES katherine.keating@bryancave.com, joel.rayala@bryancave.com, sftmdocket@bryancave.com Phone:415-268-1972		
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Registration Subject to Cancellation

Registration No	4292177	Registration date	02/19/2013
Registrant	Juice, Inc. 11529 Sunrise Valley Drive 8 Reston, VA 20191 UNITED STATES		

Goods/Services Subject to Cancellation

Class 042. First Use: 2012/06/18 First Use In Commerce: 2012/06/18 All goods and services in the class are cancelled, namely: Software as a service (SAAS) services featuring software for the construction, display, and sharing of data visualization dashboards and reports

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3193134	Application Date	02/14/2006
Registration Date	01/02/2007	Foreign Priority Date	NONE
Word Mark	FRUITION		

Design Mark	<h1>FRUITION</h1>
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Description of Mark	NONE
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Goods/Services	<p>Class 035. First use: First Use: 2002/08/01 First Use In Commerce: 2002/08/01 Advertising and marketing; Advertising,marketing and promotion services; Advice in the field of business management and marketing; Arranging and conducting marketing promotional events for others; Business advice and analysis of markets; Business consultation and management regarding marketing activities and launching of new products; Business management consulting with relation to strategy, marketing, production, personnel and retailsale matters; Business marketing and direct mail consulting services; Business marketing consulting services; Business marketing services; Commercial information agencies; Conducting business and market research surveys; Conducting marketing studies; Cooperative advertising and marketing; Cooperative advertising and marketing services by way of solicitation, customer service and providing marketing information via websites on a global computer network; Creation of marketing tools designed to increase a client company's knowledge of customer needs, and its competitors' products and services, pricing, advertising strategy and sales strategy; Development of marketing strategies and concepts; Direct marketing advertising for others; General business merchandising services, namely, marketing; Implementation and follow-up of advice in the fields of marketing; Information or enquiries on business and marketing; Market segmentation consultation; Market study and analysis of market studies; Marketing consulting; Marketing services, namely providing informational web pagesdesigned to generate sales traffic via hyperlinks to other web sites; Outsourcing in the field of sales and marketing of computer software; Promoting, advertising and marketing of the on-line websites of others; Promotion and marketing services and related consulting; Promotion,advertising and marketing of on-line websites; Providing business marketing information; Statistical evaluations of marketing data</p>
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U.S. Application No.	86040704	Application Date	08/16/2013
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Registration Date	NONE	Foreign Priority Date	NONE
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Word Mark	FRUITION
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Design Mark	<h1>FRUITION</h1>
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 2002/08/01 First Use In Commerce: 2002/08/01 Computer services, namely, cloud hosting provider services; Computer services, namely, search engine optimization; Computer software development in the field of mobile applications; Consulting services in the field of cloud computing; Consulting services in the field of software as a service (SAAS); Creation, design, development and maintenance of Web sites for third parties; Internet-based application service provider, namely, hosting, managing, developing, analyzing, and maintaining the code, applications, and software for web sites of others; Platform as a service (PAAS) featuring computer software platforms for marketing and data analysis, health care medical records, appointment scheduling, search engine optimization, security and log management services; Web site hosting services

Attachments	78814764#TMSN.jpeg(bytes) 86040704#TMSN.jpeg(bytes) Petition to Cancel (Juice).PDF(63624 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	/katherine keating/
Name	Katherine Keating
Date	06/10/2014

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

DOCTORS ONLINE SERVICES, LLC,
DBA FRUITION,

Petitioner,

v.

JUICE, INC., AKA JUICE ANALYTICS,

Registrant.

Cancellation No. _____

Serial No.: 85/670,116

Reg. No.: 4,292,177

Mark: FRUITION

Filed: July 6, 2012

Registered: February 19, 2013

Class: 42

PETITION TO CANCEL

Doctors Online Services, LLC, dba Fruition (“Fruition”) believes and alleges that it has been and will continue to be damaged by the registration of the above-referenced mark, and hereby petitions for cancellation pursuant to 15 U.S.C. § 1064. As grounds for cancellation, Fruition alleges the following:

The Parties

1. Fruition is a Colorado limited liability company with its principal place of business at 201 Fillmore Street #200, Denver, Colorado 80206.
2. Fruition is informed and believes that Juice, Inc., aka Juice Analytics (“Juice”) is a Virginia corporation with its principal place of business at 11529 Sunrise Valley Drive 8, Reston, Virginia 20191.

Fruition’s FRUITION® Mark

3. Fruition has offered technology-based advertising and marketing services under its FRUITION® mark for more than 10 years. Its services include statistical analysis of marketing data, design and development of web sites and applications, search engine

optimization, and social media management.

4. Since at least as early as 2003, Fruition has used its FRUITION mark in connection with software-as-a-service services that include marketing dashboards for analyzing and visualizing client data.

5. Fruition owns an incontestable federal registration for its FRUITION mark in class 35 in connection with:

advertising and marketing; advertising, marketing and promotion services; advice in the field of business management and marketing; arranging and conducting marketing promotional events for others; business advice and analysis of markets; business consultation and management regarding marketing activities and launching of new products; business management consulting with relation to strategy, marketing, production, personnel and retail sale matters; business marketing and direct mail consulting services; business marketing consulting services; business marketing services; commercial information agencies; conducting business and market research surveys; conducting marketing studies; cooperative advertising and marketing; cooperative advertising and marketing services by way of solicitation, customer service and providing marketing information via websites on a global computer network; creation of marketing tools designed to increase a client company's knowledge of customer needs, and its competitors' products and services, pricing, advertising strategy and sales strategy; development of marketing strategies and concepts; direct marketing advertising for others; general business merchandising services, namely, marketing; implementation and follow-up of advice in the fields of marketing; information or enquiries on business and marketing; market segmentation consultation; market study and analysis of market studies; marketing consulting; marketing services, namely providing informational web pages designed to generate sales traffic via hyperlinks to other web sites; outsourcing in the field of sales and marketing of computer software; promoting, advertising and marketing of the on-line websites of others; promotion and marketing services and related consulting; promotion, advertising and marketing of on-line websites; providing business marketing information; statistical evaluations of marketing data

(Reg. No. 3,193,134) (the “Fruition Registration”). The Fruition Registration issued on January 2, 2007, with a first-use date of August 1, 2002.

6. Fruition also owns a pending application for its FRUITION mark in connection with the following services:

computer services, namely, cloud hosting provider services; computer services, namely, search engine optimization; computer software development in the field of mobile applications; consulting services in the field of cloud computing; consulting services in the field of software as a service (SaaS); creation, design, development and maintenance of web sites for third parties; internet-based application service provider, namely, hosting, managing, developing, analyzing, and maintaining the code, applications, and software for web sites of others; platform as a service (PaaS) featuring computer software platforms for marketing and data analysis, health care medical records, appointment scheduling, search engine optimization, security and log management services; web site hosting services

(App. No. 86/040,704) (the “Fruition Application”). Fruition filed the Fruition Application on August 16, 2013, on the basis of use in commerce, with a first-use date of August 1, 2002.

7. Fruition’s use of its FRUITION mark has been continuous since 2002.

8. Fruition has used and continues to use its FRUITION mark among the relevant purchasing public and consumers to identify the source and origin of Fruition’s high-quality services and to distinguish such services from products and services offered by its competitors and others.

9. Fruition has expended, and continues to expend, a substantial amount of resources, money, time, and effort promoting, marketing, advertising, and building consumer recognition and goodwill in its extremely valuable services under and in connection with its FRUITION mark.

Juice’s FRUITION Registration

10. On July 6, 2012, Juice filed a federal trademark application for the mark FRUITION in class 42 in connection with “*software as a service (SAAS) services featuring software for the construction, display, and sharing of data visualization dashboards and reports,*” claiming June 18, 2012 as a first-use date. On February 19, 2013, this application matured to registration as Registration No. 4,292,177 (the “Juice Registration”).

11. The Patent and Trademark Office has issued an office action against the Fruition Application, citing the Juice Registration as a barrier to registration based on Section 2(d) of the Lanham Act.

Priority and Likelihood of Confusion

12. Fruition's first use of its FRUITION mark pre-dates the June 18, 2012 first-use date alleged in the Juice Registration. Accordingly, Fruition is the senior user, and priority is not an issue in these proceedings.

13. The mark in the Juice Registration is identical to Fruition's FRUITION mark in sight, sound, and commercial impression.

14. The services listed in the Juice Registration overlap with services listed in the Fruition Registration and offered by Fruition under its FRUITION mark for more than 10 years.

15. Upon information and belief, the services Fruition offers under its FRUITION mark and the services Juice offers under the FRUITION mark are directed to the same class of purchasers.

16. Upon information and belief, the services Fruition offers under its FRUITION mark and the services Juice offers under the FRUITION mark are offered in the same channels of trade.

17. The FRUITION mark, when applied by Juice to the services set forth in the Juice Registration, is likely to cause confusion or mistake or to deceive or mislead the relevant trade, consumers, and purchasing public as to the source of the parties' services and/or as to whether Juice's services are sponsored, approved, or endorsed by or are otherwise related to Fruition.

18. The Juice Registration is likely to lead the public to incorrectly conclude that the services with which Juice uses the FRUITION mark are or have been authorized, sponsored, or licensed by Fruition, resulting in damage to Fruition and the public.

19. The Juice Registration has damaged or is likely to damage Fruition because the Registration supports and assists Juice in confusing and misleading the public in its use of the FRUITION mark, creates the misleading impression that Fruition is sponsoring or otherwise authorizing Juice's use of the FRUITION mark, creates the misleading impression that Fruition has approved the services offered by Juice under the FRUITION mark, and gives the color of exclusive right to Juice in violation and derogation of the prior and superior rights of Fruition.

20. The Juice Registration has further damaged Fruition by posing a barrier to registration of Fruition's FRUITION mark for services in class 42 which Fruition has offered under its FRUITION mark since before Juice's alleged first use of the same mark.

21. The continued registration of the FRUITION mark by Juice would be inconsistent with Fruition's rights in its FRUITION mark under the common law and the Lanham Act.

WHEREFORE Fruition prays that its petition be granted and Registration No. 4,292,177 be canceled in its entirety.

Respectfully submitted,
BRYAN CAVE LLP

Dated: June 10, 2014



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Fruition