

ESTTA Tracking number: **ESTTA650411**

Filing date: **01/15/2015**

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	Rock Fit, LLC		
Entity	limited liability company	Citizenship	Delaware
Address	6017 RANDOLPH STREET COMMERCE, CA 90040 UNITED STATES		

Attorney information	Irene Y. Lee Russ, August & Kabat 12424 Wilshire Boulevard, 12th Floor Los Angeles, CA 90025 UNITED STATES ilee@raklaw.com, azivkovic@raklaw.com Phone:310.826.7474		
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Registration Subject to Cancellation

Registration No	2803390	Registration date	01/06/2004
Registrant	BALLY TOTAL FITNESS HOLDING CORPORATION 8700 WEST BRYN MAWR CHICAGO, IL 606100395 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2002/04/18 First Use In Commerce: 2002/04/18 All goods and services in the class are cancelled, namely: Nutritionally fortified energy drink beverages
Class 032. First Use: 2002/04/18 First Use In Commerce: 2002/04/18 All goods and services in the class are cancelled, namely: Energy sports drinks

Grounds for Cancellation

The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.	Trademark Act section 14
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Attachments	2359-US2 Petition for Cancellation '390 Reg.pdf(124731 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	/Irene Y. Lee/
Name	Irene Y. Lee
Date	01/15/2015

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

Rock Fit, LLC,

Petitioner,

v.

Bally Total Fitness Holding Corporation,

Respondent.

Cancellation No.



Mark:

Reg. No.: 2,803,390

Reg. Date: January 6, 2004

Petition for Cancellation

Petitioner Rock Fit, LLC ("Rock Fit") believes that it is, and will continue to be, damaged by Reg. No. 2,803,390 (the "'390 Registration") and hereby petitions as follows:

1. The owner of the '390 Registration is Bally Total Fitness Holding Corporation ("Holding Corp.").

2. In or about December 2012, Rock Fit's parent company, FAM, LLC, acquired and had assigned from Holding Corp. a number of BALLY TOTAL FITNESS trademarks and corresponding registrations and applications in connection with exercise equipment in Class 28, clothing in Class 25, supplements and nutritional products in Class 5, and food products in Classes 29, 30 and 32, including the '390 Registration.

3. In preparing the trademark purchase agreement and attendant trademark assignment, however, the parties inadvertently omitted the '390 Registration.

4. To address this inadvertent omission, Rock Fit has contacted Holding Corp. to amend the purchase trademark agreement and attendant trademark assignment so to reflect the acquisition and assignment of the '390 Registration from Holding Corp. to Rock Fit's parent company, FAM, LLC, so FAM, LLC can then assign the '390 Registration to Rock Fit.

5. On information and belief, the '390 Registration is being used by, or with the permission of, Holding Co. so as to misrepresent the source of the goods on or in connection with which the mark is registered.

6. In light of the foregoing, Rock Fit respectfully submits that the '390 Registration should be cancelled.

WHEREFORE, Rock Fit prays that this cancellation be sustained in favor of Rock Fit and that the '390 Registration be cancelled in accordance with the provisions of the Trademark Act.

Dated: January 15, 2015

Respectfully submitted,



Irene Y. Lee
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Attorney for Rock Fit, LLC

