

ESTTA Tracking number: **ESTTA669590**

Filing date: **04/29/2015**

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	Walnut Street Enterprises, LLC.		
Entity	LLC	Citizenship	AZ
Address	485 W. Wheeler Road Tucson, AZ 85737 UNITED STATES		

Attorney information	Michael J. Curley Quarles & Brady LLP One South Church Avenue Suite 1700 Tucson, AZ 85701 UNITED STATES tm-dept@quarles.com, michael.curley@quarles.com, victoria.minneman@quarles.com Phone:520-770-8768
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Registration Subject to Cancellation

Registration No	4010856	Registration date	08/16/2011
Registrant	OMNIVIT, INC. 14620 NW 60 AVENUE MIAMI, FL 33014 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2010/01/06 First Use In Commerce: 2010/01/06 All goods and services in the class are cancelled, namely: Dietary and nutritional supplements; Dietary supplements; Nutritional supplements
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Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	155268_0004_Petition_For_Cancellation_2015-04-29.pdf(110701 bytes) Exhibits.pdf(205854 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	/Michael J. Curley/
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Name	Michael J. Curley
Date	04/29/2015

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

In the matter of Registration No. 4,010,856

Mark: RENEW-U

Date of Registration: August 16, 2011

WALNUT STREET ENTERPRISES, LLC.

Petitioner,

v.

OMNIVIT, INC.

Respondent.

Cancellation No.:

PETITION FOR CANCELLATION

Petitioner, Walnut Street Enterprises, LLC (“Walnut” or “Petitioner”), an Arizona limited liability company located and doing business at 485 W. Wheeler Road, Tucson, Arizona 85737, believes that it has been damaged and will continue to be damaged by Registration No. 4,010,856, issued to Omnivit, Inc. (“Omnivit” or “Respondent”), a Florida corporation believed to have a place of business at 14620 NW 60 Avenue, Miami, Florida 33014, and hereby petitions to cancel the same.

As grounds for cancellation, Petitioner alleges upon information and belief the following:

THE PARTIES AND STANDING

1. Petitioner is an Arizona Limited Liability Company with its principal place of business at 485 W. Wheeler Road, Tucson, Arizona 85737.

2. To the best of Petitioner's knowledge, the name and address of the current owner of U.S. Registration No. 4,010,856 for RENEW-U (“the Registration” or “Registered Mark”) is

OMNIVIT, LLC ("Respondent"), 14620 NW 60 Avenue, Hialeah, Florida 33014. *See* Exhibit 1 (Registration Certificate for Registered Mark) at 1.

3. Respondent is the current owner of U.S. Trademark Registration Serial Number 4,010,856 for RENEW-U for use in conjunction with "Dietary and nutritional supplements; Dietary supplements; Nutritional supplements" in connection with International Class 005 and U.S. Classes 006, 018, 044, 046, 051, 052, registered on the principal register on August 16, 2011. *Id.*

4. Respondent claims a first use in commerce for the RENEW-U mark of January 06, 2010. *Id.*

5. On July 29, 2014, Petitioner filed an intent-to-use trademark application with the United States Patent and Trademark Office (Application Serial Number 86/351,702) covering the mark "ReNEW YOU" for "nutritional supplements" in International Class 005.

6. On November 12, 2014, the Patent and Trademark Office issued an Office Action refusing to register Petitioner's ReNEW YOU application on the ground that the mark is confusingly similar to Respondent's Registered Mark.

7. Petitioner has been damaged and will continue to be damaged if the Registered Mark is permitted to remain on the Principal Register because the Registered Mark stands as a bar to Petitioner's ability to federally register and protect its ReNEW YOU mark for the goods identified in paragraph 5, above.

COUNT I
ABANDONMENT (15 U.S.C. §§ 1064(3), 1127)

8. Upon information and belief, Respondent is no longer an active company. *See* Exhibit 2 (Print out of Entity Status from Florida Department of State Division of Corporations) at 1.

9. Upon information and belief, Respondent has not filed an annual report with the state of Florida since February 22, 2012. *Id.*

10. Upon information and belief, due to Respondent's failure to file annual reports, Respondent was administratively dissolved by the state of Florida on November 27, 2013. *Id.*

11. Upon information and belief, Respondent at one time had a website, <http://www.omnivit.com>, which was an online store which sold a wide range of nutritional supplements. However, that website is no longer owned by Respondent and is currently offered for sale. (See <http://www.omnivit.com>).

12. Upon information and belief, Respondent has either never actively used the mark in question or has permanently ceased all use of the Registered Mark in connection with "Dietary and nutritional supplements; Dietary supplements; Nutritional supplements" in connection with International Class 005 and U.S. Classes 006, 018, 044, 046, 051, 052, with no intention to resume use of the Registered Mark.

13. Upon information and belief, Respondent has not assigned rights to use the Registered Mark to any third party which is making use of the Registered Mark in commerce.

14. Upon information and belief, Respondent has failed to use the mark for at least three consecutive years, without intent to resume use, and Respondent has abandoned the Registered Mark within the meaning of 15 U.S.C. §§ 1064(3) and 1127.

15. By virtue of the foregoing, if the Registered Mark is permitted to remain on the Principal Register with all the rights and privileges conferred on it by its status as a Principal Registration, Petitioner will be damaged, including its inability to secure a registration for its ReNEW YOU mark, and Respondent will enjoy unlawful gain and advantage to which it is not entitled under the Lanham Act, 15 U.S.C. §§ 1501 *et seq.*

WHEREFORE, Petitioner requests that Registration No. 4,010,856 for use in connection with “Dietary and nutritional supplements; Dietary supplements; Nutritional supplements” in International Class 005 and U.S. Classes 006, 018, 044, 046, 051, 052 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Dated this 29th day of April, 2015.

Respectfully submitted,

/Michael J. Curley/
Michael J. Curley
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*Attorneys for Petitioner Walnut Street
Enterprises, LLC.*

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2015, I served a copy of the foregoing Petition for Cancellation upon Respondent at its correspondence address of record in the United States Trademark Office by depositing one copy thereof in the United States Mail with First Class postage affixed thereon, addressed as follows and in accordance with 37 C.F.R. § 2.119(b)(4):

OMNIVIT, INC.
14620 NW 60 Ave
Hialeah, FL 33014-2811

And

SPIEGEL & UTRERA, P.A.
1840 SW 22nd Street
4th Floor
Miami, FL 33145

Date: April 29, 2015

/s/ Victoria Minneman
Victoria Minneman

QB\155268.00003\34490480.1

Exhibit 1

United States of America
United States Patent and Trademark Office

Renew-U

Reg. No. 4,010,856

OMNIVIT, INC. (FLORIDA CORPORATION)
14620 NW 60 AVENUE
MIAMI, FL 33014

Registered Aug. 16, 2011

Int. Cl.: 5

FOR: DIETARY AND NUTRITIONAL SUPPLEMENTS; DIETARY SUPPLEMENTS; NUTRITIONAL SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

TRADEMARK

FIRST USE 1-6-2010; IN COMMERCE 1-6-2010.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-906,750, FILED 1-7-2010.

WARREN L. OLANDRIA, EXAMINING ATTORNEY



David J. Kyffers

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

Exhibit 2



Detail by Entity Name

Florida Profit Corporation

OMNIVIT, INC.

Filing Information

Document Number	P03000139665
FEI/EIN Number	200431494
Date Filed	11/26/2003
State	FL
Status	INACTIVE
Last Event	ADMIN DISSOLUTION FOR ANNUAL REPORT
Event Date Filed	09/27/2013
Event Effective Date	NONE

Principal Address

14620 NW 60 AVENUE
MIAMI LAKES, FL 33014

Changed: 03/15/2010

Mailing Address

14620 NW 60 AVENUE
MIAMI LAKES, FL 33014

Changed: 03/15/2010

Registered Agent Name & Address

SPIEGEL & UTRERA, P.A.
1840 SW 22ND ST.
4TH FLOOR
MIAMI, FL 33145

Officer/Director Detail

Name & Address

Title PD

ALFONSO, ANTHONY
7740 SW 70 ST
MIAMI, FL 33143

Annual Reports

Report Year	Filed Date
2010	03/15/2010
2011	04/15/2011
2012	02/22/2012

Document Images

02/22/2012 -- ANNUAL REPORT	View image in PDF format
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03/30/2007 -- ANNUAL REPORT	View image in PDF format
02/20/2006 -- ANNUAL REPORT	View image in PDF format
10/11/2005 -- REINSTATEMENT	View image in PDF format
10/05/2004 -- REINSTATEMENT	View image in PDF format
11/26/2003 -- Domestic Profit	View image in PDF format