

ESTTA Tracking number: **ESTTA704375**

Filing date: **10/26/2015**

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	Energizer Brands, LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	533 Maryville University Drive St. Louis, MO 63141 UNITED STATES		

Attorney information	William M. Bryner Kilpatrick Townsend & Stockton LLP 1001 West Fourth Street Winston-Salem, NC 27101 UNITED STATES wbryner@ktslaw.com, japratt@ktslaw.com, ccao@ktslaw.com, jburns@ktslaw.com, tmadmin@ktslaw.com Phone:336-607-7300		
----------------------	--	--	--

Registrations Subject to Cancellation

Registration No	2174106	Registration date	07/21/1998
Registrant	SUPERFEET WORLDWIDE, INC. 1419 WHITEHORN STREET BELLINGHAM, WA 98225 UNITED STATES		

Goods/Services Subject to Cancellation

Class 010. First Use: 1986/03/14 First Use In Commerce: 1986/03/14 All goods and services in the class are cancelled, namely: orthotic inserts for shoes

Grounds for Cancellation

Abandonment	Trademark Act section 14		
Registration No	1543393	Registration date	06/13/1989
Registrant	SUPERFEET WORLDWIDE, INC. 1419 WHITEHORN STREET Ferndale, WA 98248 UNITED STATES		

Goods/Services Subject to Cancellation

Class 010. First Use: 1986/03/14 First Use In Commerce: 1986/03/14 All goods and services in the class are cancelled, namely: ORTHOTIC INSERTS FOR SHOES

Grounds for Cancellation

Abandonment	Trademark Act section 14		
Registration No	2258089	Registration date	06/29/1999

Registrant	SUPERFEET WORLDWIDE, INC. 1419 WHITEHORN STREET FERNDALE, WA 98248 UNITED STATES
------------	---

Goods/Services Subject to Cancellation

Class 010. First Use: 1998/04/03 First Use In Commerce: 1998/04/03 All goods and services in the class are cancelled, namely: orthotic inserts for footwear
--

Grounds for Cancellation

Abandonment	Trademark Act section 14
-------------	--------------------------

Attachments	Consolidated Petition to Cancel SUPERFEET ENERGIZER, ENERGIZER, SYNERGIZER.pdf(32186 bytes)
-------------	--

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	/William M. Bryner/
Name	William M. Bryner
Date	10/26/2015

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

ENERGIZER BRANDS, LLC,)	
)	
Petitioner,	)	Consolidated Cancellation No.
)	_____
v.)	
	)	Registration Nos.
SUPERFEET WORLDWIDE, INC.,	)	2,174,106 (ENERGIZER)
	)	1,543,393 (SUPERFEET ENERGIZER)
	)	2,258,089 (SYNERGIZER)
Respondent.)	
_____)	

CONSOLIDATED PETITION FOR CANCELLATION

Petitioner Energizer Brands, LLC (“Petitioner”), a Delaware limited liability company with a place of business at 533 Maryville University Drive, St. Louis, Missouri, 63141, believes it will be damaged by the continued maintenance on the Principal Register of Registration No. 2,174,106 of the **ENERGIZER** mark, Registration No. 1,543,393 of the **SUPERFEET ENERGIZER** mark, and Registration No. 2,258,089 of the **SYNERGIZER** mark to Respondent Superfeet Worldwide, Inc., and therefore states the following as its petition for cancellation of those registrations:

1. For decades, Petitioner and its predecessors-in-interest (collectively, “Energizer”) have been engaged in the manufacture, distribution, and sale, in interstate commerce, of a wide variety of products, including, by way of example and without limitation, batteries, flashlights, battery chargers, and related goods and services.

2. Since at least as early as 1955, Energizer has continuously used, and presently uses, various trademarks consisting of the designation **ENERGIZER**, or incorporating the designation **ENERGIZER** together with other word and/or design elements (collectively, the “**ENERGIZER Marks**”), in interstate commerce throughout the United States in connection with

the advertising, promotion, distribution, and sale of its goods and services.

3. Petitioner owns numerous registrations of the ENERGIZER Marks on the Principal Register of the United States Patent and Trademark Office, together with all right, title, and interest in the marks shown therein, and all of the business and goodwill represented thereby (collectively, the “ENERGIZER Registrations”).

4. As a result of Energizer’s long and continuous use of the ENERGIZER Marks in connection with its various products, and as a consequence of Energizer’s extensive advertising, promotion, distribution, and sale of such products under its ENERGIZER Marks, the consuming public and the trade have come to recognize, and do recognize, the ENERGIZER Marks as being used by Petitioner or by a single source, and associate and identify the goods and services offered and sold under the ENERGIZER Marks with Petitioner or with a single source. Petitioner consequently derives an invaluable goodwill from this recognition, association, and identification by the consuming public and the trade.

5. Because of the high degree of inherent and acquired distinctiveness of the ENERGIZER Marks, the length of time and extent to which Energizer has used the ENERGIZER Marks, the vast advertising and publicity of which the ENERGIZER Marks have been the subject, the national trading area in which the ENERGIZER Marks have been and are used, the high degree of consumer recognition of the ENERGIZER Marks, and the numerous registrations incorporating the ENERGIZER Marks, including but not limited to those identified above as the ENERGIZER Registrations, the designation ENERGIZER is a well-known and famous trademark widely recognized by the general consuming public of the United States as a designation of source of Petitioner’s goods and services and deserving of a broad scope of legal protection.

6. Registration No. 2,174,106 of the ENERGIZER mark issued on July 21, 1998, Registration No. 1,543,393 of the SUPERFEET ENERGIZER mark issued on June 13, 1989, and Registration No. 2,258,089 of the SYNERGIZER mark issued on June 29, 1999. The current owner of Registration Nos. 2,174,106, 1,543,393, and 2,258,089 is Superfeet Worldwide, Inc. (“Registrant”), a Washington corporation with a place of business at 1419 Whitehorn Street, Ferndale, Washington 98248.

7. The ENERGIZER mark shown in Registration No. 2,174,106 and the SUPERFEET ENERGIZER mark shown in Registration No. 1,543,393 are both registered in International Class 10 for “orthotic inserts for shoes,” and the SYNERGIZER mark shown in Registration No. 2,258,089 is registered in International Class 10 for “orthotic inserts for footwear.”

8. Upon information and belief, including upon independent investigation undertaken by Petitioner and upon communications by Registrant to Petitioner’s investigator, Registrant for more than three (3) consecutive years has not used the ENERGIZER mark, the SUPERFEET ENERGIZER mark, and the SYNERGIZER mark (together, “Registrant’s Marks”) in connection with the identified goods in Registration Nos. 2,174,106, 1,543,393, and 2,258,089. Upon information and belief, use of Registrant’s Marks in connection with the identified goods in Registration Nos. 2,174,106, 1,543,393, and 2,258,089 has been discontinued with an intent not to resume such use. As such, Registrant has abandoned Registrant’s Marks that are the subject of Registration Nos. 2,174,106, 1,543,393, and 2,258,089.

9. Energizer began using the ENERGIZER Marks long before the first use, actual or constructive, of Registrant’s Marks and long before registration of Registrant’s Marks.

10. Registrant's Marks and the previously used and registered ENERGIZER Marks are similar in appearance, sound, connotation, and commercial impression.

11. Registrant's Marks are registered for goods related to those for which Energizer has previously used the ENERGIZER Marks, for which Energizer has registered the ENERGIZER Marks shown in the ENERGIZER Registrations, or which are in the natural zone of expansion for the ENERGIZER Marks.

12. Petitioner is damaged by the continued registration of Registrant's Marks because Registrant's Marks so resemble Petitioner's previously used ENERGIZER Marks as to be likely, when used on or in connection with the goods of Registrant, to cause confusion, or to cause mistake, or to deceive. Petitioner is further damaged by the continued registration of Registrant's Marks because any use by Registrant of the marks would also be likely to suggest an association arising from the similarity and identity between Registrant's Marks and the ENERGIZER Marks that would impair and dilute the distinctiveness of the famous ENERGIZER Marks. The continued registration of Registrant's Marks gives color and exclusive statutory right to Registrant, in violation and derogation of the prior and superior rights of Petitioner.

WHEREFORE, Petitioner therefore requests that Registration Nos. 2,174,106, 1,543,393, and 2,258,089 be cancelled, and that this Consolidated Petition for Cancellation be sustained in favor of Petitioner.

The Commissioner is authorized to charge Kilpatrick Townsend & Stockton LLP's Deposit Account No. 20-1430 if there is a deficiency in the enclosed filing fee. Please direct all correspondence regarding this proceeding to William M. Bryner at his address and telephone number identified below.

Dated: October 26, 2015

Respectfully submitted,

Theodore H. Davis Jr.
Jared S. Welsh
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4528
Telephone: (404) 815-6500
Facsimile: (404) 815-6555

By /William M. Bryner/
William M. Bryner
Kilpatrick Townsend & Stockton LLP
1001 West Fourth Street
Winston-Salem, NC 27101-2400
Telephone: (336) 607-7482
Facsimile: (336) 734-2656

Attorneys for Petitioner Energizer Brands, LLC

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

ENERGIZER BRANDS, LLC,)	
)	
Petitioner,	)	Consolidated Cancellation No.
)	_____
v.)	
	)	Registration Nos.
SUPERFEET WORLDWIDE, INC.,	)	2,174,106 (ENERGIZER)
	)	1,543,393 (SUPERFEET ENERGIZER)
	)	2,258,089 (SYNERGIZER)
Respondent.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Consolidated Petition for Cancellation was served on Respondent at its address of record for Registration Nos. 2,174,106, 1,543,393, and 2,258,089 on October 26, 2015 via first class mail to:

Superfeet Worldwide, Inc.
1419 Whitehorn Street
Bellingham, Washington 98225

/William M. Bryner/
William M. Bryner
Attorney for Petitioner

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing Consolidated Petition for Cancellation is being filed electronically with the TTAB via ESTTA on this day, October 26, 2015.

/William M. Bryner/
William M. Bryner
Attorney for Petitioner