

ESTTA Tracking number: **ESTTA774546**

Filing date: **10/04/2016**

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 | Dimension Beverage Branding, LLC | | |
| Entity | Corporation | Citizenship | Minnesota |
| Address | 50 Interlachen Lane Excelsior, MN 55331 UNITED STATES | | |

| | | | |
|----------------------|--|--|--|
| Attorney information | Scott W. Johnston Merchant & Gould P.C. P.O. Box 2910 Minneapolis, MN 55402-0910 UNITED STATES sjohnston@merchantgould.com, Inguyen@merchantgould.com, slindemeier@merchantgould.com, dockmpls@merchantgould.com Phone:612-332-5300 | | |
|----------------------|--|--|--|

Registrations Subject to Cancellation

| | | | |
|-----------------|---|-------------------|------------|
| Registration No | 3478051 | Registration date | 07/29/2008 |
| Registrant | NUZEE, INC. 2865 Scott Street, Suite 101 Vista, CA 92081 UNITED STATES | | |

Goods/Services Subject to Cancellation

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|---|
| Class 032. First Use: 2008/04/09 First Use In Commerce: 2008/04/09 All goods and services in the class are cancelled, namely: Non-alcoholic beverages, namely, [fruit flavored drinks, soft drinks, non-alcoholic wine, fruit juices, drinking water, and] sports drinks |
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Grounds for Cancellation

| | | | |
|-----------------|---|-------------------|------------|
| Abandonment | Trademark Act Section 14(3) | | |
| Registration No | 4052978 | Registration date | 11/08/2011 |
| Registrant | NUZEE, INC. 2865 Scott Street, Suite 101 Vista, CA 92081 UNITED STATES | | |

Goods/Services Subject to Cancellation

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| Class 005. First Use: 2008/04/09 First Use In Commerce: 2008/04/09 All goods and services in the class are cancelled, namely: Mineral, vitamin, or nutritionally enhanced water |
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Grounds for Cancellation

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|-------------|-----------------------------|
| Abandonment | Trademark Act Section 14(3) |
|-------------|-----------------------------|

| | |
|-------------|--|
| Attachments | 2016 10 04 Petition for Cancellation TORQ 3478051 and 4052978.PDF(243319 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 | /SWJ/ |
| Name | Scott W. Johnston |
| Date | 10/04/2016 |

Petitioner's TORQUE application from the USPTO's Trademark Status & Document Retrieval (TSDR) database is attached as Exhibit A.

4. Petitioner has a bona fide intent to use the mark TORQUE for energy drinks.

5. Upon information and belief, Registrant is not using the TORQ mark in U.S. commerce in connection with either "Non-alcoholic beverages, namely, sports drinks" or "Mineral, vitamin, or nutritionally enhanced water."

6. Upon information and belief, Registrant discontinued use of the TORQ mark in U.S. commerce in connection with either "Non-alcoholic beverages, namely, sports drinks" or "Mineral, vitamin, or nutritionally enhanced water" with intent not to resume such use.

7. Upon information and belief, Registrant has not used the TORQ mark in U.S. commerce in connection with either "Non-alcoholic beverages, namely, sports drinks" or "Mineral, vitamin, or nutritionally enhanced water" for more than three consecutive years.

8. Upon information and belief, Registrant abandoned the TORQ mark in connection with "Non-alcoholic beverages, namely, sports drinks" and "Mineral, vitamin, or nutritionally enhanced water."

9. Petitioner believes that continued registration of Registrant's TORQ mark will affect Petitioner's ability to register its TORQUE mark and will result in damage to Petitioner.

WHEREFORE, Petitioner asks that its Petition for Cancellation be granted and that Registration Nos. 3,478,051 and 4,052,978 be cancelled.

Please direct all correspondence to:

Scott W. Johnston
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910

Petitioner herein appoints Scott W. Johnston, Reg. No. 39,721; Andrew S. Ehard, John A. Clifford, Reg. No. 30,247; Gregory C. Golla; Dana Jozefczyk; Heather J. Kliebenstein; Danielle I. Mattessich; Christopher J. Schulte; William D. Schultz, Linhda Nguyen, and all other attorneys of the firm of Merchant & Gould P.C., its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Respectfully submitted,

Dimension Beverage Branding, LLC

By its Attorneys,



Date: October 4, 2016

Scott W. Johnston
Linhda Nguyen
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
Minneapolis, Minnesota 55402-2215
Telephone: (612) 332-5300

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITION FOR CANCELLATION was served upon the following Registrant by First Class Mail, postage prepaid, on October 4, 2016:

Nuzee, Inc.
2865 Scott Street, Suite 101
Vista, CA 92081



Scott W. Johnston

EXHIBIT A

Generated on: This page was generated by TSDR on 2016-09-30 10:10:13 EDT

Mark: TORQUE

TORQUE

US Serial Number: 87134914

Application Filing Date: Aug. 11, 2016

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

Status: New application will be assigned to an examining attorney approximately 3 months after filing date.

Status Date: Aug. 16, 2016

Mark Information

Mark Literal Elements: TORQUE

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: Energy drinks

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

| | | |
|--------------------|------------------------|-----------------|
| Filed Use: No | Currently Use: No | Amended Use: No |
| Filed ITU: Yes | Currently ITU: Yes | Amended ITU: No |
| Filed 44D: No | Currently 44D: No | Amended 44D: No |
| Filed 44E: No | Currently 44E: No | Amended 44E: No |
| Filed 66A: No | Currently 66A: No | |
| Filed No Basis: No | Currently No Basis: No | |

Current Owner(s) Information

Owner Name: Dimension Beverage Branding, LLC

Owner Address: 50 Interlachen Lane
Excelsior, MINNESOTA 55331
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: MINNESOTA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Andrew S. Ehard

Docket Number: 17648.2US01

Attorney Primary Email Address: dockmpls@merchantgould.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: ANDREW S. EHARD
MERCHANT & GOULD P.C.
P.O. BOX 2910
MINNEAPOLIS, MINNESOTA 55402-0910
UNITED STATES

Phone: 612-332-5300

Fax: 612-332-9081

Correspondent e-mail: dockmpls@merchantgould.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

| Date | Description | Proceeding Number |
|---------------|--|-------------------|
| Aug. 31, 2016 | APPLICANT AMENDMENT PRIOR TO EXAMINATION - ENTERED | 74221 |
| Aug. 25, 2016 | ASSIGNED TO LIE | 74221 |
| Aug. 18, 2016 | TEAS VOLUNTARY AMENDMENT RECEIVED | |
| Aug. 16, 2016 | NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM | |
| Aug. 15, 2016 | NEW APPLICATION ENTERED IN TRAM | |

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMO LAW OFFICE 110

Date in Location: Aug. 31, 2016