

ESTTA Tracking number: **ESTTA964439**

Filing date: **04/03/2019**

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 has filed a petition to cancel the registration indicated below.

**Petitioner Information**

Name	Ultimate Life Limited		
Entity	private limited company	Citizenship	United Kingdom
Address	9 Yorks Place Leeds, LS12D UNITED KINGDOM		

Attorney information	Eric Perrott, Esq. Gerben Law Firm, PLLC 1050 Connecticut Ave., Suite 500 Washington, DC 20036 UNITED STATES jgerben@gerbenlawfirm.com, eperrott@gerbenlawfirm.com, cwellington@gerbenlawfirm.com 2022942287
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**Registration Subject to Cancellation**

Registration No.	5583361	Registration date	10/16/2018
Registrant	ADVANCED LABORATORY INTERNATIONAL LLC 8759 AIRPORT ROAD SUITE C REDDING, CA 96002 UNITED STATES		

**Goods/Services Subject to Cancellation**


Class 005. First Use: 2016/06/01 First Use In Commerce: 2016/06/01 All goods and services in the class are subject to cancellation, namely: Coffee weight loss dietary nutritional supplements
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
No use of mark in commerce before application, amendment to allege use, or statement of use was filed	Trademark Act Sections 14(1) and 1(a), (c), and (d)

**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application No.	88194144	Application Date	11/14/2018
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LEANBEAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2016/11/00 First Use In Commerce: 2016/11/00 Dietary supplements		

Attachments	88194144#TMSN.png( bytes ) LEAN JAVA BEAN_Petition to Cancel_April 3 2019.pdf(619027 bytes )
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Signature	/Eric Perrott, Esq./
Name	Eric Perrott, Esq.
Date	04/03/2019

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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<p>Ultimate Life Limited</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="padding-left: 40px;">v.</p> <p>ADVANCED LABORATORY INTERNATIONAL LLC,</p> <p style="padding-left: 40px;">Registrant,</p>	<p>Opposition No.: _____</p> <p>LEAN JAVA BEAN</p> <p>Registration No: 5583361</p>
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**PETITION TO CANCEL**

Ultimate Life Limited (“Petitioner”) hereby files its Petition to Cancel pursuant to Fed. R. Civ. P. 15(a), petitioning for the cancellation of Registration No. 5583361 for the LEAN JAVA BEAN (the “Registered Mark”), registered to ADVANCED LABORATORY INTERNATIONAL LLC (“Registrant”), and states as follows:

1. Petitioner is a United Kingdom limited company.
2. Petitioner is the owner of the LEANBEAN trademark (“Petitioner’s Mark) for “dietary supplements” in International Class 5 (“Petitioner’s Goods”).
3. Petitioner has used Petitioner’s Mark in commerce for Petitioner’s Goods since at least as early as December 11, 2016.
4. The United States Patent and Trademark Office (“USPTO”) records identify Registrant, a California limited liability company, with an address of 8759 AIRPORT ROAD SUITE C REDDING, CALIFORNIA 96002 as the owner of U.S. Registration No. 5583361 (the “Registrant’s Registration”) for the mark LEAN JAVA BEAN for “Coffee weight loss dietary nutritional supplements” in International Class 5 (“Registrant’s Goods”).

5. Because the registration of the Registered Mark presumably gives Registrant at least a *prima facie* exclusive right in the Registered Mark, Petitioner believes that its legal use and registration of the LEANBEAN mark will be impaired by the continued registration of the Registered Mark and thus, Petitioner believes it will be damaged.

6. In fact, on February 19, 2019, the examining attorney assigned to Petitioner's trademark application, ser. no 88194144 cited the Registered Mark against Petitioner's trademark application, based on an alleged likelihood of confusion.

**COUNT 1: PRIORITY AND LIKELIHOOD OF CONFUSION**

7. The Registered Mark is for "LEAN COFFEE BEAN," a phrase closely similar in sight, sound and commercial impression to Petitioner's "LEANBEAN" mark.

8. Registrant's Goods are nearly identical or complementary to Petitioner's Goods.

9. Petitioner has sold and rendered Petitioner's Goods in the United States under the Petitioner's Mark since at least as early as December 11, 2016, before any priority date to which Registrant's Registration is entitled.

10. Petitioner has built up substantial goodwill and customer recognition in Petitioner's Mark in the United States.

11. Petitioner's Mark is symbolic of extensive goodwill and consumer recognition built up by Petitioner through substantial amounts of time and effort in sales and promotion of Petitioner's Goods.

12. Therefore, Petitioner has priority based on Petitioner's first use of the Petitioner's Mark in the United States prior to the filing date of Registrant's Registration or any other priority date available to Registrant.

13. In view of the fact that the parties' respective marks are closely similar, and that the goods are nearly identical or highly-related, it is alleged that the Registered Mark so resembles

Petitioner's Mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive, and therefore, should be refused under Section 2(d) of the Lanham Act.

14. Because the registration of the Registered Mark presumably gives Registrant at least a *prima facie* exclusive right in the Registered Mark, Petitioner maintains that its legal use and registration of the LEANBEAN mark will be impaired by the continued registration of the Registered Mark and thus, Petitioner believes it will be damaged.

15. In view of the above, Registrant is not entitled to continued federal registration of the Registered Mark as Petitioner has priority based on prior use of the LEANBEAN mark in commerce in connection with nearly identical or highly-related goods.

#### **COUNT 2: NON-USE**

16. Upon information and belief, Registrant did not have use of the Registrant's Mark when it filed its application on March 8, 2017.

17. Petitioner's research has uncovered the following factual basis for its claims. All allegations made on information and belief may be proven with information solely within control of Registrant:

- a. Petitioner's search of the internet finds no prior offerings for goods or services bearing the Registered Mark on or before March 8, 2017.
- b. Petitioner's search of the relevant marketplaces finds no prior offerings for goods or services bearing the Registered Mark on or before March 8, 2017.
- c. Registrant's social media states that the brand "just launched" on April 5, 2017.

18. As use is a requirement for registration under the Lanham Act, the Registered Mark is *void*.

19. The Registrant's Registration is inconsistent with the Petitioner's right to use and register Petitioner's Mark for its goods.

20. By reason of all the foregoing, Petitioner will be gravely damaged by the continuance of Registrant's Registration.

**WHEREFORE**, by its undersigned attorney, Ultimate Life Limited respectfully requests that this Petition to Cancel be sustained and that registration of the mark, LEAN JAVA BEAN, Registration No. 5583361, be canceled.

Dated: April 3, 2019

Respectfully submitted,



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