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UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

DB

Mailed: August 21, 2002

Cancellation No 92040154

MUSCLETECH RESEARCH AND
DEVELOPMENT,
INC

v.

PURITAN-QUARTZ, INC.

TRADEMARK TRIAL AND
APPEAL BOARD

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DWAYNE BOWLING, LEAD LEGAL ASSISTANT

The Board inadvertently forwarded the notice instituting this proceeding and a copy of the petition to cancel that was intended for registrant to an incorrect address. The error is regretted.

Accordingly, the above notice, with enclosure, is remailed to registrant at the correct address: PURITAN-QUARTZ, INC. PHARMACEUTICALS, 27655-B NORTH AVENUE HOPKINS, VALENCIA, CA 91355.

If there has been any transfer of interest in the involved registration, registrant must so advise the Board and registrant must submit copies of the appropriate documents. See Section 10 of the Trademark Act and Patent and Trademark Rules 3.71 and 3.73.

In view of the circumstances herein, the time for filing an answer to the petition to cancel is extended to forty days from the mailing date of this order. Any discovery requests or notices served that remain unanswered as of the mailing date of this order must be reserved in accordance with the rules, unless otherwise agreed to by the parties.

In accordance with the Trademark Rules of Practice, discovery is open, and the close of discovery and testimony dates are set as indicated below. In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Discovery period to close: March 9, 2003

Testimony period for party in
Position of plaintiff to close
(opening thirty days prior thereto): June 7, 2003

Testimony period for party in
Position of defendant to close
(opening thirty days prior thereto): August 6, 2003

Rebuttal testimony period to close
(opening fifteen days prior thereto): September 20, 2003

Briefs shall be filed in accordance with Trademark Rule 1.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

Hand

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

In the Matter of Registration No. 1,522,350
Issued January 31, 1989
HEALTH TECH

MUSCLETECH RESEARCH AND
DEVELOPMENT, INC.,

Petitioner,

v.

PURITAN-QUARTZ, INC., d/b/a PURITAN-
QUARTZ PHARMACEUTICALS, INC.,

Respondent.

01-10-2002
U.S. Patent & TMO/TM Mail Receipt Dt. #88
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Cancellation No.

PETITION FOR CANCELLATION

Petitioner, MuscleTech Research and Development, Inc. ("Petitioner"), a company organized under the laws of Canada and having a place of business at 7050 Telford Way, Suite 100, Mississauga, Ontario, Canada L5S 1V7, believes that it has been and will continue to be damaged by Registration No. 1,522,350, issued on January 31, 1989 for the mark "HEALTH TECH" (the "Registered Mark"), and hereby petitions to cancel same.

As grounds for cancellation, it is alleged that:

1. On September 28, 2001, Petitioner applied to register the mark HEALTH-TECH in International Class No. 5 on the Principal Register of the United States Patent and Trademark Office ("PTO"). The application has been designated Serial Number 76/319,145 in the records of the PTO.
2. On December 11, 2001, the PTO Examining Attorney issued an Office Action refusing registration of Petitioner's mark under Section 2(d) of the Trademark Act (15 U.S.C.

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Section 1052(d)) based upon a likelihood of confusion with the Registered Mark.

3. Upon information and belief, Registrant has abandoned the Registered Mark by discontinuing use of the mark with intent not to resume such use.

4. Petitioner is being injured by the continued presence on the Principal Register of Registration No. 1,522,350 because this registration acts as an obstacle to the registration of Petitioner's mark on the Principal Register, thus denying Petitioner the benefits of federal registration.

5. Upon information and belief, the name and address of the current owner of record of the Registered Mark is Puritan-Quartz, Inc., d/b/a Puritan-Quartz Pharmaceuticals, Inc., 27655 N. Avenue Hopkins, Unit B, Valencia, California, 91355.

WHEREFORE, for the foregoing reasons, Petitioner respectfully prays that Registration No. 1,522,350 be canceled.

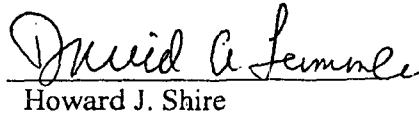
A duplicate copy of this Petition for Cancellation is enclosed herewith. Any required fees not submitted herewith should be charged to Kenyon & Kenyon Account No. 11-0600.

Respectfully submitted,

KENYON & KENYON

Dated: January 7, 2002

By:



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David A. Lammey
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New York, New York 10004
(212) 425-7200
Attorneys for Petitioner

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: BOX FEE - TTAB, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on January 7, 2002.

Signature

