

ESTTA Tracking number: **ESTTA43548**

Filing date: **08/30/2005**

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	Specialty Nutrition Products, LLC		
Entity	Limited Liability Company	Citizenship	Florida
Address	One South Ocean Blvd., Suite 300 Boca Raton, FL 33432 UNITED STATES		

Attorney information	Matthew H. Swyers, Esq. The Swyers Law Firm 344 Maple Avenue West, Suite 389 Vienna, VA 22180 UNITED STATES mswyers@swyerslaw.com Phone:(703) 585-2077
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Registration Subject to Cancellation

Registration No	2735038	Registration date	07/08/2003
Registrant	Jarrow Formulas, Inc. 1824 South Robertson Blvd Los Angeles, CA 90035 UNITED STATES		
Goods/Services Subject to Cancellation	Class 005. First Use: 20010905, First Use In Commerce: 20010905 Goods/Services: Dietary Supplement		

Attachments	Petition to Cancel.pdf (8 pages)
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Signature	/Matthew H. Swyers/
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Name	Matthew H. Swyers, Esq.
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Date	08/30/2005
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

In the matter of U.S. Registration 2,735,038,
For the mark JOINT SUSTAIN,
Registered on the Principal Register on July 8, 2003.

Specialty Nutrition Products, LLC,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Petition No. _____
	:	
Jarrow Formulas, Inc.	:	
	:	
Registrant.	:	

PETITION TO CANCEL

Petitioner Specialty Nutrition Products, LLC (hereinafter "Petitioner"), a Florida Limited Liability Company doing business at One South Ocean Blvd., Suite 300, Boca Raton, Florida 33432, believes that it is and will continue to be damaged by the continued registration of U.S. Registration 2,735,038 for the terms JOINT SUSTAIN and, accordingly, hereby petitions this honorable tribunal to cancel the same pursuant to 15 U.S.C. § 1064 and 37 C.F.R. § 2.111(b).

Grounds for Cancellation

As grounds for the instant Petition to Cancel, it is alleged as follows:

1. The terms JOINT SUSTAIN as more fully identified in U.S. Registration 2,735,038 (hereinafter "terms JOINT SUSTAIN"), as used by Registrant Jarrow Formulas, Inc. (hereinafter "Registrant"), are merely descriptive as applied to the Registrant's goods and have not acquired secondary meaning to entitle it them registration and/or continued registration on the Principal Register;
2. The terms JOINT SUSTAIN as used by the Registrant fail to function as a trademark or source identifier of the Registrant's goods;

3. The terms JOINT SUSTAIN were abandoned and are no longer in use by the Registrant, a related entity, assignee, or successor in interest; and/or

4. Registrant utilized fraud in the procurement of registration for the terms JOINT SUSTAIN by informing the USPTO that the mark was in use as early as September 5, 2001 when the Registrant knew that such use had yet to occur.

Statement of Facts

In support for the instant Petition to Cancel, it is alleged that:

1. Registrant contends that it is the owner of the terms JOINT SUSTAIN used in connection with the following goods:

International Class 5: Dietary Supplements.

2. Registrant filed its application to register the terms JOINT SUSTAIN on or about July 2, 1999 as an intent-to-use application. The application received U.S. Serial No. 75/725,221.

3. Following the application's initial examination, it was approved for publication on the Principal Register as an intent-to-use application.

4. The terms JOINT SUSTAIN were published for opposition on February 1, 2000.

5. At the time of publication, the examining attorney had not been provided with a specimen of use displaying use of the terms JOINT SUSTAIN in connection with the Registrant's goods.

6. The United States Patent and Trademark Office (hereinafter "USPTO") issued a Notice of Allowance for the terms JOINT SUSTAIN on or about April 25, 2000.

7. Between October 25, 2000 and November 20, 2002, Registrant filed and was granted five (5) extensions of time in which to file its Statement of Use for the terms JOINT SUSTAIN (U.S. Serial No. 75/725,221).

8. On or about March 25, 2003, Registrant filed its Statement of Use and submitted a specimen of use with the USPTO in support of its registration efforts for the terms JOINT SUSTAIN.

9. The material attached as Exhibit 1 is a true and accurate copy of the TEAS data reflecting the information submitted by Registrant in support of the registration of the terms JOINT SUSTAIN with its on-line Statement of Use filed on or about March 25, 2003. *See* Exhibit 1.

10. The material attached as Exhibit 2 is a true and accurate copy of the specimen(s) of use as reflected in the TEAS data submitted by Registrant in support of the registration of the terms JOINT SUSTAIN with its on-line Statement of Use filed on or about March 25, 2003. *See* Exhibit 2.

11. Registrant's terms JOINT SUSTAIN registered on the Principal Register on July 8, 2003.

12. Based upon information and belief, the Registrant had not commenced use of the terms JOINT SUSTAIN as of September 5, 2001.

13. Based upon information and belief, any use of the terms JOINT SUSTAIN by the Registrant have been descriptive in nature without having acquired secondary meaning and, as such, fail to function as a trademark or source identifier of the Registrant's goods.

14. Based upon information and belief, Registrant has also abandoned use of the terms JOINT SUSTAIN to describe its goods.

15. Petitioner has applied for registration of the following trademarks on the Principal Register of the USPTO:

SUSTAIN SPORT

U.S. Serial No. 76/626,809

SUSTAIN DIGEST	U.S. Serial No. 76/626,810
SUSTAIN MSR	U.S. Serial No. 78/545080
SUSTAIN MULTI	U.S. Serial No. 76/626811

16. Each of the above-referenced marks have been issued preliminary refusals under section 2(d) of the Trademark Act by their respective examining attorneys due to the examining attorneys' respective beliefs that registration of the above-referenced applications may be likely to cause confusion with the Registrant's registered terms JOINT SUSTAIN.

17. Accordingly, Petitioner believes that it will be damaged by Registrant's continued registration of the terms JOINT SUSTAIN insofar as Petitioner's marks as set forth above will not be permitted to register while Registrant's registration remains in effect.

18. WHEREFORE in consideration that the terms JOINT SUSTAIN are descriptive and have not acquired secondary meaning, fail to function as a trademark, are no longer in use, have been abandoned, and/or that Registrant procured the registration by fraud, Petitioner requests and prays that U.S. Registration 2,735,038 be cancelled on the grounds and for the reasons set forth hereinabove.

Respectfully submitted this 30th day of August, 2005.

The Swyers Law Firm, PLLC



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Counsel for Petitioner

PTO/TM/1553 (Rev 4/2006)

OMB Control #0651-0039 (Exp. 08/31/2004)

**~TRADEMARK/SERVICE MARK ALLEGATION OF USE~
(Statement of Use/Amendment to Allege Use)**

*** To the Commissioner for Trademarks ***

<DOCUMENT INFORMATION>

<TRADEMARK/SERVICEMARK ALLEGATION OF USE>

<VERSION 1.24>

<TRADEMARK/SERVICEMARK INFORMATION>

<MARK> JOINT SUSTAIN

<TYPED FORM> Yes

<SERIAL NUMBER> 75725221

<LAW OFFICE ASSIGNED> TMO Law Office 110

<APPLICANT INFORMATION>

<NAME> Jarrow Formulas, Inc.

<STREET> 1824 South Robertson Blvd

<CITY> Los Angeles

<STATE> CA

<COUNTRY> US

<ZIP/POSTAL CODE> 90035

<ATTORNEY INFORMATION>

<NAME> Mark D. Giarrana, Esq.

<STREET> 700 State Street P.O. Box 1960

<CITY> New Haven

<STATE> CT

<COUNTRY> USA

<ZIP/POSTAL CODE> 06509-1960

<E-MAIL ADDRESS> jwhitney@el-law.com

<AUTHORIZE E-MAIL COMMUNICATION> Yes

<NOTICE OF ALLOWANCE INFORMATION>

<NOTICE OF ALLOWANCE> YES

<GOODS AND SERVICES INFORMATION>

<ALL GOODS AND/OR SERVICES IN NOTICE OF ALLOWANCE> Yes

~ The applicant is using or is using through a related company the mark in commerce on or in connection with all the goods/services listed in the Application/Notice of Allowance. ~

<FEE INFORMATION>

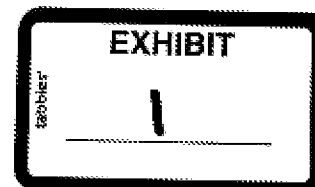
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<NUMBER OF CLASSES> 1

<USE INFORMATION>

<INTERNATIONAL CLASS NUMBER> 005

<SPECIMEN> Yes



<SPECIMEN DESCRIPTION> Specimen submitted consists of a digital photograph of a label bearing the mark as applied to the goods.

<FIRST USE ANYWHERE DATE> 09/05/2001

<FIRST USE IN COMMERCE DATE> 09/05/2001

<LAW OFFICE INFORMATION>

~ The USPTO is authorized to communicate with the applicant, attorney or representative at the below e-mail address ~

<E-MAIL ADDRESS FOR CORRESPONDENCE> jwhitney@cl-law.com

<SIGNATURE AND OTHER INFORMATION>

~ Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce. ~

~ The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner, and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true. ~

<USE HANDWRITTEN SIGNATURE> Yes

<NAME> Siddharth Shastri

<TITLE> VP Product Development

<RAM INFORMATION>

<RAM SALE NUMBER> 743

<RAM ACCOUNTING DATE> 03/25/2003

<INTERNET TRANSMISSION DATE> Tue Mar 25 11:08:01 EST 2003

<TEAS STAMP> USPTO/SOU-172.30.228.74-20030325110801276015-75725221-2001e80dd79e21b45bc273c304deb6ebdb6-RAM-743-20030325110518727043

<E-MAIL ADDRESS FOR ACKNOWLEDGMENT> jwhitney@cl-law.com

The information collected on this form allows the USPTO to determine whether a mark may be registered on the Principal or Supplemental register, and provides notice of an applicant's claim of ownership of the mark. Responses to the request for information are required to obtain the benefit of a registration on the Principal or Supplemental register, 15 U.S.C. §§1051 et seq. and 37 C.F.R. Part 2. All information collected will be made public. Gathering and providing the information will require an estimated 10 minutes (depending if the application is based on an intent to use the mark in commerce, use of the mark in commerce, or a foreign application or registration). Please direct comments on the time needed to complete this form, and/or suggestions for reducing this burden to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington D.C. 20231. Please note that the PTO may not conduct or sponsor a collection of information using a form that does not display a valid OMB control number.

SPECIMEN

Internet Transmission Date:
03252003

Serial Number:
75725221

Class Number:
005

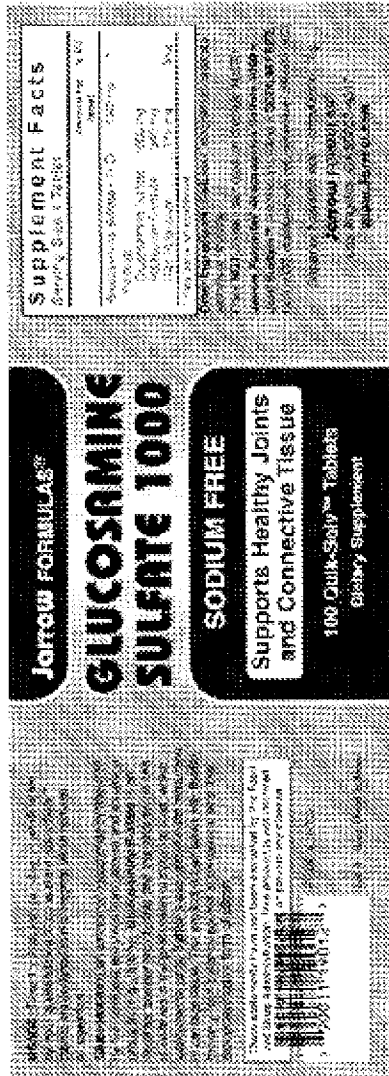
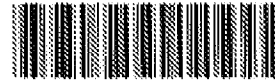


EXHIBIT
2

USAGE: Take 1 - 2 tablets per day, or as directed by your qualified health consultant. Quik-Solv™ tablets are designed to disintegrate within minutes of ingestion.

Glucosamine is an aminomonosaccharide synthesized by transaminase enzymes from glucose and an amine group from glutamine. Glucosamine Sulfate is an essential component of joints and intestinal tissue and is involved in the production of synovial fluid, which lubricates the joints. Sulfur is also utilized in the production of cartilage tissue. This product is best taken with BioSil, the only high potency source of orthosilicic acid, the biologically active form of silicon.

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, cure, mitigate, treat, or prevent any disease.



PROD # 19012

Lot # Best Used Before

Jarrow FORMULAS®

GLUCOSAMINE SULFATE 1000

SODIUM FREE

Supports Healthy Joints and Connective Tissue

100 Quik-Solv™ Tablets
Dietary Supplement

Supplement Facts

Serving Size 1 Tablet

	Amount Per Tablet	% DV
Glucosamine Sulfate • 2KCl	1340 mg	*
Yielding:		
Glucosamine Sulfate	1000 mg	
Potassium Chloride	340 mg	
Net Potassium	178 mg	5% [†]

* Daily Value not established.

Other Ingredients: Cellulose, magnesium stearate and silicon dioxide.

Does NOT contain salt (sodium chloride [NaCl]).

Jarrow Formulas' Glucosamine Sulfate 1000 is Joint Sustain™ nutrition, providing a SODIUM FREE form of GS stabilized with only potassium chloride (KCl).

Superior Nutrition and Formulation™ by
Jarrow FORMULAS®
Los Angeles, CA 90035-4317
www.Jarrow.com