

ESTTA Tracking number: **ESTTA88899**

Filing date: **07/07/2006**

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	DIVINE FOODS, INC.		
Entity	Corporation	Citizenship	CALIFORNIA
Address	445 Corporate Drive Suite B Escondido, CA 92029 UNITED STATES		

Attorney information	Thomas D. Foster TDFoster 12760 High Bluff Drive Suite 300 San Diego, CA 92130 UNITED STATES foster@tdfoster.com Phone:858.922.2170
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### Registration Subject to Cancellation

Registration No	2967312	Registration date	07/12/2005
Registrant	SKYLARK SPORT MARKETING CORPORATION 3275 CORPORATE VIEW VISTA, CA 92081 UNITED STATES		
Goods/Services Subject to Cancellation	Class 030. First Use: 2005/03/15 , First Use In Commerce: 2005/03/15 Goods/Services: ready-to-eat cereal derived food bars; fortified candy bars; tea		

Attachments	6115.001-01 20060707 PETITION FOR CANCELLATION.pdf ( 3 pages )(33042 bytes )
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Signature	/Thomas D. Foster/
Name	Thomas D. Foster
Date	07/07/2006

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

In the Matter of Registration No.  
2,967,312 Issued July 12, 2005

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DIVINE FOODS. INC., :  
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           Petitioner, :  
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           v. :  
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 :  
 SKYLARK SPORT MARKETING CORP. :  
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           Registrant :  
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PETITION FOR CANCELLATION

Divine Foods, Inc., a California corporation, having a place of business at 445 Corporate Drive #B Escondido, California 92029 believes that it will be damaged by the continued registration of Registration No. 2967312, and hereby petitions to cancel the same.

As grounds for cancellation it is alleged that:

1. Petitioner is engaged in the business of developing, producing, and marketing all-natural, organic food products for the health and fitness oriented consumer. Petitioner has invested a substantial amount of time, money, and effort in promoting Petitioner's business and is continuing to do the same.
2. On August 23, 2005, Petitioner filed a use-based trademark application on the Principal Register for "PRANABAR" in Class 30 for a "Food Bar." The application was assigned Serial No. 78/697,967 but the USPTO issued a 2(d) refusal based on a likelihood of confusion with Reg. No. 2967312, first registered by Prana Energy Foods, Inc, and ultimately assigned to Skylark Sport Marketing Corporation.

3. On July 9, 1998, Prana Energy Foods, a California corporation, filed application Serial No. 75516321 for registration on the Principal Register for the mark “PRANA” for International Classes 29, 30, and 32. The USPTO registered this application on July 12, 2005 assigning it Registration No. 2,967,312. On November 8, 2005 Prana Energy Foods assigned its entire interest in this registration to Skylark Sport Marketing Corporation. This Registration is the subject of this petition.
4. On information and belief, Registrant is a California corporation with a principal place of business at 3275 Corporate View, Vista, California 92081.
5. On March 24, 2005, the original Registrant’s President, Jeffrey Theodosakis, signed a declaration for a Statement Of Use stating, that “the mark shown therein is in use in commerce in or with the United States in connection with” a number of goods, including specifically for the purposes of this petition, *ready-to-eat cereal derived food bars and fortified candy bars*. On information and belief, the description of goods in the Statement Of Use is substantially more expansive than goods on which the original Applicant, Prana, had at that time used the trademark.
6. On information and belief, Prana Energy Foods has never used the PRANA mark on or in connection with “*ready-to-eat cereal derived food bars and fortified candy bars*” Therefore, on information and belief, when Jeffrey Theodosakis, President of Prana Energy Foods submitted the Declaration to the USPTO attesting that the Applicant used the mark on such items, such information was false.
7. Upon information and belief, these false statements were made with the intent to maintain maximum trade mark protection by inducing agents of the PTO to accept the Statement of Use and to issue the registration. Relying on the truth of the statements submitted by

Applicant, the PTO did accept the Statement Of Use on June 4, 2005.

8. Upon information and belief, Applicant knew at the time they were made that the statements in the Declaration that led to the issuing of Registration No. 2,967,312 were false.
9. Petitioner is likely to be damaged by the continued registration of the "PRANA" mark because the PTO Examining Attorney has refused Petitioner's application Serial No. 78/697,967 on the grounds that there is a likelihood of confusion between Petitioner's mark and Registrant's PRANA registration covering the goods in Class 30, namely, *ready-to-eat cereal derived food bars and fortified candy bars*.
10. In view of the above allegations, Registrant is not entitled to continue registration of its PRANA mark for goods in Class 30, because, upon information and belief, Registrant committed fraud in its registration.

WHEREFOR, the Petitioner respectfully prays that Registration No. 2967312 be canceled in-part with respect to the Class 30 goods.

Respectfully submitted,

DIVINE FOODS. INC.

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Registration No. 44,686  
TDFoster  
Counsel for Petitioner

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