

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

In the matter of trademark Registration No. 2712051
For the mark: ISLAND BERRIES
International Class: 5
Date registered: April 29, 2003
Date filed: October 3, 2001
Date of first use: October 15, 2001

Petitioner, D. Stiles

v.

Registrant, General Nutrition Investment Company

PETITION TO CANCEL

The Petitioner is D. Stiles, 5901 Warner Ave. #115, Huntington Beach, California 92649.

To the best of Petitioner's knowledge, the name and address of the current owner of the registration are General Nutrition Investment Company, an Arizona corporation, 1002 South 63rd Avenue at Buckeye, Phoenix, Arizona 85043.

The above-identified Petitioner believes that it is or will be damaged by the above-identified registration, and hereby petitions to cancel the same.

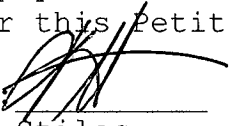
The grounds for cancellation are as follows:

1. Petitioner has standing because Petitioner was refused registration of the mark ISLAND NUTRITION (Serial No. 78966660) because of a likelihood of confusion with the Registrant's mark, pursuant to Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.*
2. Petitioner has priority. Petitioner since August 11, 1995, has been and is now using the mark ISLAND NUTRITION in commerce for dietary supplements. Petitioner filed a prior USPTO application (Serial No. 75926825) for registration of the mark on February 23, 2000. The Examining Attorney refused that application only because of a similarity to another registration that has since expired; and the Petitioner's mark was otherwise acceptable for publication at that time. Although that application was abandoned, the mark itself has never been abandoned, and the application is evidence of use prior to the Registrant's application (and prior to the Registrant's claimed first date of use).

3. The Petitioner's mark is ISLAND NUTRITION, with the term "NUTRITION" disclaimed, in standard characters, for "Vitamins, mineral supplements, nutritional supplements, and herbal supplements containing amino acids, enzymes, phytonutrients, marine extracts, and herbal extracts" in International Class 5. The Registrant's mark is ISLAND BERRIES, with the term "BERRIES" disclaimed, for "dietary supplement smoothie" in International Class 5. The completely arbitrary term, "ISLAND" is the dominant portion of both marks. In addition, the goods of both parties are highly similar, if not identical, and likely to be found in the same channels of trade such as health stores and supermarkets. In view of the similarity of the marks and the goods of the respective parties, it is alleged that the Respondent's registered mark so resembles the Petitioner's mark as to cause a Likelihood of Confusion.

WHEREFORE, Petitioner prays that Registration No. 2712051 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

A payment in the sum of \$300 is enclosed to cover the filing fee for this Petition.

By 
D. Stiles
Petitioner

Date: October 12, 2007