

ESTTA Tracking number: **ESTTA206756**

Filing date: **04/23/2008**

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    | ND Labs Inc. dba Nutritional Designs                    |             |        |
| Entity  | Corporation   | Citizenship | U.S.A. |
| Address | 202 Merrick Road<br>Lynbrook, NY 11563<br>UNITED STATES |             |        |

|                            |  |  |  |
|----------------------------|--|--|--|
| Correspondence information | Alexandrie Lacroix<br>ND Labs Inc. dba Nutritional Designs<br>202 Merrick Road<br>Lynbrook, NY 11563<br>UNITED STATES<br>alexl@ndlabs.com Phone:516-612-4900 |  |  |
|----------------------------|--|--|--|

### Registration Subject to Cancellation

|                 |   |                   |            |
|-----------------|---|-------------------|------------|
| Registration No | 3331563   | Registration date | 11/06/2007 |
| Registrant      | Direct Response Holdings, LLC<br>2500 E. Imperial Highway, Suite 201<br>Brea, CA 92821<br>UNITED STATES |                   |            |

### Goods/Services Subject to Cancellation

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| Class 005. First Use: 2006/09/01 First Use In Commerce: 2006/09/01<br>All goods and services in the class are cancelled, namely: Dietary supplements |
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### Grounds for Cancellation

|                                      |                            |
|--------------------------------------|----------------------------|
| Abandonment                          | Trademark Act section 14   |
| Priority and likelihood of confusion | Trademark Act section 2(d) |

|                     |   |
|---------------------|---|
| Related Proceedings | ND LABS, INC. first used "Fiber Flow" in commerce on February 22, 2000 as a powder Fiber product. ND Labs then added to its line a Liquid Fiber product on November 8, 2005 called "Liquid Fiber Flow". The liquid Fiber was named and created after the powder product. The "Fiber-Flow" mark of Direct Response Holdings was first used in commerce on September 1, 2006; that is six years after ND Labs created its Fiber, "Fiber Flow" and introduced it on Market. There is a likelihood of confusion within the names and descriptions of both marks. To avoid abandonment of ND Labs' application, it respectfully petitions to cancel the "Fiber-Flow" mark of Direct Response Holdings. |
|---------------------|---|

### Mark Cited by Petitioner as Basis for Cancellation

|                  |          |                  |            |
|------------------|----------|------------------|------------|
| U.S. Application | 78772260 | Application Date | 12/13/2005 |
|------------------|----------|------------------|------------|

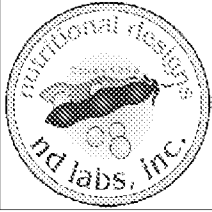
|                     |  |                       |      |
|---------------------|--|-----------------------|------|
| No.                 |  |                       |      |
| Registration Date   | NONE   | Foreign Priority Date | NONE |
| Word Mark           | LIQUID FIBER FLOW  |                       |      |
| Design Mark         |  |                       |      |
| Description of Mark | NONE   |                       |      |
| Goods/Services      | Class 005. First use:<br>Liquid dietary fiber supplement that blended fiber with FOS (Fructo-oligosaccharide) and Sorbitol |                       |      |

|             |   |
|-------------|---|
| Attachments | 78772260#TMSN.jpeg ( 1 page )( bytes )<br>action letter.pdf ( 1 page )(158487 bytes ) |
|-------------|---|

### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

|           |               |
|-----------|---------------|
| Signature | /Beth Beller/ |
| Name      | Beth Beller   |
| Date      | 04/23/2008    |



## **ND Labs INC.**

202 Merrick Road, Lynbrook, NY 11563  
516-612-4900 [www.ndlabs.com](http://www.ndlabs.com)

Date: April 23,2008

Direct Response Holdings, LLC  
2500 E. Imperial Highway, Suite 201  
Brea, CA 92821

To whom it may concern;

Since at least as early as February 20, 2000 ND Labs has been using the Liquid Fiber Flow as Fiber supplements in various channels of trade both domestically and internationally.

ND Labs' trademark application with the Trademark Office is facing abandonment based on your company's registration of the identical mark. In refusing registration, the trademark examiner has indicated that a likelihood of confusion exists in view of alleged similarities between the goods of the parties.

Review of your company's registration particulars indicates a first date of use of the mark on September 1, 2006. This first date of use is more than six years after our client's first date of use. As you might be aware, under U.S. trademark laws, where conflicts exist, the first user will have the priority to the trademark. Accordingly, assuming the position of the trademark examiner is accurate; ND Labs will have the exclusive rights to the Liquid Fiber Flow trademark.

Attached is a copy of a petition of cancellation of your registered mark filed by ND Labs which was sent to the Trademark Office as soon as possible. We are also considering other possible actions to protect the interests of our Liquid Fiber Flow mark.

We write to alert you of this conflict and to request your cooperation in resolving the conflict as asserted by the trademark examiner. We request that your company immediately abandon its registration of Fiber Flow. However, our client will be receptive of any proposals from your company to reduce the likelihood of confusion in the market place. We wish that an amicable resolution can be achieved, and would appreciate a response from your company.

Thank you for your attention to this matter.

Sincerely,

*Beth Beller, RD, RD, CN, CDE*

*Our Mission Since 1980: Helping People Become Healthier*