

ESTTA Tracking number: **ESTTA356417**

Filing date: **07/06/2010**

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	Doctors Nutrition LLC		
Entity	Limited Liability Company	Citizenship	Mississippi
Address	721 Cowan Road Gulfport, MS 39507 UNITED STATES		

Attorney information	Jason R. Lee Lee, Lee & Associates, P.C. 2531 Jackson Road Suite 234 Ann Arbor, MI 48103 UNITED STATES jason@llapc.com Phone:866-400-2507		
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Registration Subject to Cancellation

Registration No	3663306	Registration date	08/04/2009
Registrant	DRS Nutrition LLC PO Box 1036 Benson, NC 27504 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2007/07/05 First Use In Commerce: 2007/07/05 All goods and services in the class are cancelled, namely: Wholesale distributorships featuring nutritional products and retail store services featuring nutritional products


Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77673721	Application Date	02/19/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DOCTOR'S NUTRITION		

Design Mark	Doctor's Nutrition
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1997/08/01 First Use In Commerce: 1997/08/01 Multi-vitamin preparations

U.S. Application No.	77779430	Application Date	07/13/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DOCTOR'S NUTRITION		
Design Mark			
Description of Mark	The mark consists of rectangles divided once into two sections with the word "Doctor's" in the left section and the word "Nutrition" in the right section.		
Goods/Services	Class 005. First use: First Use: 1997/08/01 First Use In Commerce: 1997/08/01 Dietary supplements; Herbal supplements; Mineral supplements; Nutritional supplements; Vitamins		

Attachments	77673721#TMSN.jpeg (1 page)(bytes) 77779430#TMSN.jpeg (1 page)(bytes) PETITION FOR CANCELLATION.pdf (4 pages)(219436 bytes)
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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	/Jason R. Lee/
Name	Jason R. Lee
Date	07/06/2010

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

Doctors Nutrition LLC, formerly The Jimmy L Fox)	
Janine D Fox USA Partnership)	
Petitioner,)	Cancellation No. _____
)	In the Matter of
v.)	Registration No. 3663306
)	Filed: January 21, 2009
DRS Nutrition LLC)	Mark: DRS Nutrition
Respondent.)	Published: May 19, 2009
)	Registered: August 4, 2009

PETITION FOR CANCELLATION

Petitioner, Doctors Nutrition LLC (Petitioner), a Mississippi Limited Liability Company, having its principal place of business at 721 Cowan Road, Gulfport, MS 39507, believes it will be damaged by Registration No. 3663306 (Registration) and hereby Petitions to cancel said Registration. The Registration was filed by Respondent, DRS Nutrition LLC. (Respondent), on January 21, 2009, for the mark DRS Nutrition in International Class 035 for “Wholesale distributorships featuring nutritional products and retail store services featuring nutritional products”, and claimed first use as early as July 05, 2007.

As grounds for this Petition, it is alleged that:

1. At least as early as August 01, 1997, Petitioner began using the name "Doctor's Nutrition" for nutritional Supplements, multi-vitamin preparations, dietary supplements, mineral supplements, nutritional supplements, and vitamins.
2. Petitioner applied for a registered federal trademark for "Doctor's Nutrition" and design for "nutritional supplements, dietary supplements, vitamins, minerals, and herbal supplements on August 20, 1999.
3. Petitioner was granted a registration for this mark on April 9, 2002 (Registration No. 2557705)
4. Unknown to the Petitioner the Registered mark was cancelled on January 17, 2009, for the lack of filing the required Sections 8 & 9 forms between the 9th and 10th years after registration was granted.
5. Upon discovering their mark was cancelled the Petitioner immediately filed a new application for "Doctor's Nutrition," (Serial number 77673721) on February 19, 2009, just over a month after the cancellation.
6. Petitioner also filed an application for "Doctor's Nutrition" and design (Serial number 77779430) on July 13, 2009.
7. Petitioner received an office action on May 15, 2009, in response to its application serial no. 77673721, citing pending application serial no. 77653689, for "DRS Nutrition," for "Wholesale distributorships featuring nutritional products and retail store services featuring nutritional products", which was filed on January 21, 2009, and has since registered on August 4, 2009.
8. Petitioner received a new office action regarding its application serial no. 77673721 on January 06, 2010 refusing registration because of the likelihood of confusion with Registration No. 3663306 for "DRS Nutrition."

9. Petitioner received an office action on April 28, 2010, in response to its application serial no. 77779430, also for the likelihood of confusion with Registration no. 3663306, for “DRS Nutrition.”
10. Respondent’s application was filed over seven years after Petitioner’s first registration was granted, and over eleven years after Petitioner first began use of the mark.
11. Respondent’s alleged date of first use, July 5, 2007, is nearly 10 years after Petitioner’s first date of use.
12. Respondent’s mark “DRS Nutrition”, when applied to Respondent’s goods, is likely to cause confusion in the marketplace with the “Doctor’s Nutrition” mark of Petitioner, both with and without design, because the marks and the goods and services are highly similar.
13. On information and belief, Registrant knew of the Petitioner’s previous registration for “Doctor’s Nutrition,” having filed their application 4 days after the Petitioner’s application died through error, and fraudulently signed the Declaration, under oath, claiming Respondent believed itself entitled to registration of the mark.

Wherefore, Petitioner hereby requests that Registration No. 3653777 be canceled.

The fee of \$300 is enclosed.

Petitioner hereby appoints the law firm of Lee, Lee & Associates, P.C., and its members, all attorneys licensed to practice in Michigan, to act as attorneys for Petitioner with full power to prosecute this Cancellation and to transact all relevant business with the United States Patent and Trademark Office and to Receive all official communications in connection with this Cancellation.

Dates this 6th day of July, 2010.

Respectfully Submitted,
Doctors Nutrition LLC, formerly The Jimmy L Fox
Janine D Fox USA Partnership.

By: /Jason R. Lee/
Jason R. Lee, Esq.
Attorney for Applicant

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I certify that the foregoing paper is being filed electronically via the Electronic System for Trademark Trials and Appeals (ESTTA).

Date: July 6th, 2010

/Jason R. Lee/
Jason R. Lee

CERTIFICATE OF SERVICE

I hereby certify that on July 6th, 2010, a true and correct copy of the foregoing Petition For Cancellation was served upon:

DRS Nutrition LLC
PO Box 1036
Benson, NC 27504

By First Class Mail addressed to the address listed above.

Date: July 6th, 20

/Jason R. Lee/
Jason R Lee