

ESTTA Tracking number: **ESTTA683910**

Filing date: **07/15/2015**

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	Vemma Nutrition Company		
Entity	Corporation	Citizenship	Arizona
Address	1621 W. Rio Salado Parkway Tempe, AZ 85281 UNITED STATES		

Attorney information	Bradley P. Hartman Hartman Titus PLC 7114 E. Stetson Drive Suite 205 Scottsdale, AZ 85251-3250 UNITED STATES trademarks@hartmantitus.com,bhartman@hartmantitus.com Phone:480-659-1515		
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Registration Subject to Cancellation

Registration No	4650330	Registration date	12/02/2014
Registrant	NUTRACLICK, LLC 24 SCHOOL STREET, 4TH FLOOR BOSTON, MA 021085113 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2014/02/24 First Use In Commerce: 2014/02/24 All goods and services in the class are cancelled, namely: Dietary supplements; nutritional supplements; protein supplements and dietary and nutritional supplements containing protein

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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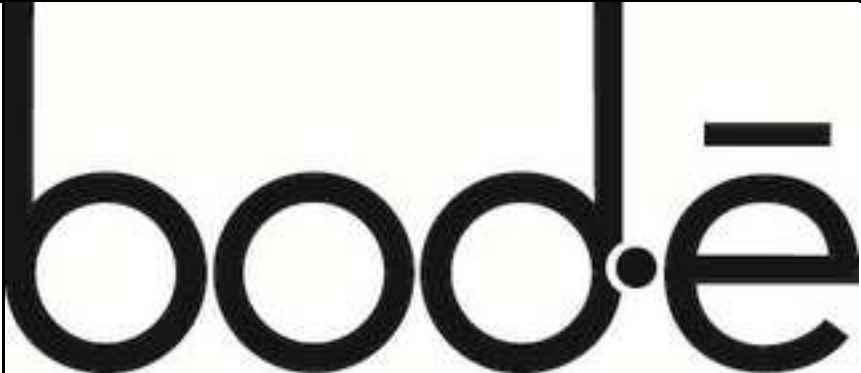
Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	4477011	Application Date	12/14/2012
Registration Date	02/04/2014	Foreign Priority Date	NONE
Word Mark	BOD-E		

Design Mark	BOD-E
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2011/08/17 First Use In Commerce: 2012/01/03 Supplement goods containing vitamin E, namely, Meal replacement drinks and shakes for weight loss purposes; Nutritional supplement drinks and shakes; Nutritional supplement drinks and shakes for use as meal replacement not for medical purposes; Protein supplement drinks and shakes for use as meal replacement not for medical purposes; Protein supplement shakes; Nutritional supplement beverages, namely, whey and/or vegan protein for use as a nutritional supplement in ready-to-mix powders and ready-to-drink beverages; Dietary supplement beverages for cleansing and detoxifying the body, aiding in the promotion of sleep and in the promotion of relaxation and for use in boosting energy

U.S. Registration No.	4477012	Application Date	12/14/2012
Registration Date	02/04/2014	Foreign Priority Date	NONE

Word Mark	BOD-E
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Design Mark	
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Description of Mark	The mark consists of the word "bod-e" in lower case with a macron over the "e".
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Goods/Services	Class 005. First use: First Use: 2011/08/17 First Use In Commerce: 2012/01/03 Supplement goods containing vitamin E, namely, Meal replacement drinks and shakes for weight loss purposes; Nutritional supplement drinks and shakes; Nutritional supplement drinks and shakes for use as meal replacement not for medical purposes; Protein supplement drinks and shakes for use as meal replacement not for medical purposes; Protein supplement shakes; Nutritional supplement beverages, namely, whey and/or vegan protein for use as a nutritional supplement in ready-to-mix powders and ready-to-drink beverages; Dietary supplement beverages for cleansing and detoxifying the body, aiding in the promotion of sleep and in the promotion of relaxation and for use in boosting energy
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Attachments	85803050#TMSN.png(bytes)
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	85803079#TMSN.png(bytes) 2015-07-15 Petition for Cancellation - BODY PRO.pdf(1077587 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	/bradley p hartman/
Name	Bradley P. Hartman
Date	07/15/2015

2. Since at least as early as January 3, 2012, Petitioner has been identifying some of its nutritional products by the trademark BOD-E®.

3. On December 14, 2012, Petitioner filed an application for federal registration of BOD-E® for use in connection with goods in Class 5.

4. On February 4, 2014, the U.S. Trademark Office granted Petitioner U.S. Trademark Registration No. 4,477,011 for the mark BOD-E® for the following goods in Class 5:

Supplement goods containing vitamin E, namely, Meal replacement drinks and shakes for weight loss purposes; Nutritional supplement drinks and shakes; Nutritional supplement drinks and shakes for use as meal replacement not for medical purposes; Protein supplement drinks and shakes for use as meal replacement not for medical purposes; Protein supplement shakes; Nutritional supplement beverages, namely, whey and/or vegan protein for use as a nutritional supplement in ready-to-mix powders and ready-to-drink beverages; Dietary supplement beverages for cleansing and detoxifying the body, aiding in the promotion of sleep and in the promotion of relaxation and for use in boosting energy.

A copy of the registration certificate is attached hereto as Exhibit A.

5. On December 14, 2012, Petitioner filed an application for federal registration of the stylized BOD-E® mark shown below for use in connection with goods in Class 5.

The logo consists of the lowercase letters 'bodē' in a bold, sans-serif font. The letter 'o' is lowercase and has a dot above it. The letter 'e' is lowercase and has a horizontal bar above it. The registered trademark symbol (®) is located at the top right of the 'e'.

6. On February 4, 2014, the U.S. Trademark Office granted Petitioner U.S. Trademark Registration No. 4,477,012 for the stylized BOD-E® mark for the following goods in Class 5:

Supplement goods containing vitamin E, namely, Meal replacement drinks and shakes for weight loss purposes; Nutritional supplement drinks and shakes; Nutritional supplement drinks and shakes for use as meal replacement not for medical purposes; Protein supplement drinks and shakes for use as meal replacement not for medical purposes; Protein supplement shakes; Nutritional supplement beverages, namely, whey and/or vegan protein for use as a nutritional supplement in ready-to-mix powders and ready-to-drink beverages; Dietary supplement beverages for cleansing and detoxifying the body, aiding in the promotion of sleep and in the promotion of relaxation and for use in boosting energy.

A copy of the registration certificate is attached hereto as Exhibit A.

7. Petitioner's registrations of BOD-E® and BOD-E® (stylized) are *prima facie* evidence of the validity of the registrations, Petitioner's ownership of the marks, and Petitioner's exclusive right to use the marks in commerce in connection with the goods specified in the certificates of registration under the provisions of 15 U.S.C. § 1057(b) and constructive notice of Opposer's claim of ownership under 15 U.S.C. § 1072.

8. On November 14, 2014, Petitioner filed an application for federal registration of BOD-E PRO™ based on its intent to use the mark for the following goods in Classes 5 and 32:

Dietary and nutritional supplements; Liquid dietary supplement for use in building muscle; Protein supplement drinks; Protein drinks for use as a nutritional supplement; Meal replacement drinks and shakes for weight loss purposes; Dietary supplement beverages for cleansing and detoxifying the

body; Protein supplement drinks and shakes for use as meal replacement not for medical purposes in Class 5; and

Energy drinks; energy shots; Hydration drinks; Physical activity recovery drinks; Sports drinks, namely, energy, performance and recovery drinks in Class 32.

9. On December 8, 2014, Petitioner filed an application for federal registration of the stylized VEMMA BOD-E PRO™ shown below based on its intent to use the mark for the following goods in Classes 5 and 32:

Dietary and nutritional supplements; Liquid dietary supplement for use in building muscle; Protein supplement drinks; Protein drinks for use as a nutritional supplement; Meal replacement drinks and shakes for weight loss purposes; Dietary supplement beverages for cleansing and detoxifying the body; Protein supplement drinks and shakes for use as meal replacement not for medical purposes in Class 5; and

Energy drinks; energy shots; Hydration drinks; Physical activity recovery drinks; Sports drinks, namely, energy, performance and recovery drinks in Class 32



10. On March 12, 2015, the U.S. Trademark Office refused registration of the BOD-E PRO™ and the stylized VEMMA BOD-E PRO™ trademarks under Section 2(d) of the Trademark Act based on the prior registration of BODY PRO to Respondent.

11. The examining attorney believes that Petitioner's BOD-E PRO™ trademark and the "BOD-E PRO" portion of Petitioner's VEMMA BOD-E PRO™ stylized trademark are the phonetic equivalent of Respondent's BODY PRO Mark.

12. The word "PRO" is short for "professional."

13. The use of the word “PRO” in the Registered Mark BODY PRO suggests that the Registered Mark is a “professional” version of Petitioner’s BOD-E® products.

14. The Registered Mark is based upon an application filed on November 7, 2013, which is approximately 22 months *after* Petitioner began using its BOD-E® and the stylized BOD-E® trademarks.

15. The Registered Mark is based upon an application filed approximately 11 months *after* Petitioner filed its application for registration of BOD-E® and the stylized BOD-E® trademarks.

16. The Registered Mark was first used by Respondent in interstate commerce on or about February 24, 2014.

17. The Registered Mark was first used by Respondent approximately 26 months *after* Petitioner began using its BOD-E® trademarks.

18. The Registered Mark was first used by Respondent approximately 15 months *after* Petitioner filed its application for registration of the BOD-E® marks.

19. Petitioner’s BOD-E® mark has priority over Respondent’s BODY PRO mark based on Petitioner’s prior filing, use, and registration of the BOD-E® marks.

20. Petitioner has expended considerable time, effort and expense in promoting, advertising and popularizing the BOD-E® mark, with the result being that the purchasing public has come to know, rely upon, associate, and recognize BOD-E® as an indicator of Petitioner’s dietary and nutritional products.

21. Through extensive and continuous use of BOD-E®, Petitioner has established substantial goodwill and consumer recognition in BOD-E® in conjunction with Petitioner’s dietary and nutritional products.

22. The words “BODY” and “BOD-E” are phonetically the same.

23. The Registered Mark has the connotation of being a “professional” version of Petitioner’s BOD-E® products.

24. The Registered Mark is confusingly similar to Petitioner’s BOD-E® mark.

25. The Registered Mark is confusingly similar to Petitioner’s BOD-E PRO™ mark.

26. The Registered Mark is registered for “Dietary supplements; nutritional supplements; protein supplements and dietary and nutritional supplements containing protein” in Class 5.

27. The goods identified in the registration of the Registered Mark are identical to the goods offered by Petitioner under the BOD-E® trademarks.

28. The goods identified in the registration of the Registered Mark overlap with, or are substantially the same as, the goods identified in Petitioner’s registrations of the BOD-E® trademarks.

29. On information and belief, Respondent’s goods are encountered and/or purchased by the same class of users and purchasers that are likely to use and

purchase Petitioner's goods under its BOD-E® trademark or who associate the BOD-E® trademark with Petitioner and its dietary and nutritional products.

30. On information and belief, Respondent's goods are marketed, promoted and offered through the same channels of trade as are the goods provided by Petitioner under its BOD-E® trademarks.

31. On information and belief, Respondent's goods are advertised and promoted through the same or similar advertising methods used by Petitioner for its goods identified by the BOD-E® trademarks.

32. Those who encounter the "BODY PRO" mark when used in connection with Respondent's dietary and nutritional supplements are likely to be confused into believing that Respondent and/or its goods are connected with or sponsored by Petitioner.

33. Respondent's use of the Registered Mark is likely to cause consumers to mistakenly believe that Respondent's goods come from Petitioner, or that Petitioner has otherwise sponsored, endorsed, or licensed the use of Petitioner's mark to Respondent for a "professional" or "pro" version of Petitioner's goods.

34. In view of the foregoing, Respondent's Mark should not have been registered under 15 U.S.C. §1052(d).

WHEREFORE, Petitioner requests that Registration No. 4,650,330 be cancelled.

DATED this 15th Day of July, 2015.

HARTMAN TITUS PLC

By: s/ Bradley P. Hartman
Bradley P. Hartman
John D. Titus
7114 E. Stetson Drive, Suite 205
Scottsdale, Arizona 85251-3250
Phone: 480-659-1515
Fax: 480-659-3304
Email: bhartman@hartmantitus.com

*Attorneys for Petitioner
Vemma Nutrition Company*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Petition for Cancellation was served via regular U.S. mail this 15th day of July, 2015, upon the following:

NutraClick, LLC
24 School Street, 4th Floor
Boston, MA 02108-5113

and

Mark Harrison
Venable LLP
PO Box 34385
Washington, DC 20043-9998

s/Bradley P. Hartman

EXHIBIT A

United States of America
United States Patent and Trademark Office

BOD-E

Reg. No. 4,477,011

Registered Feb. 4, 2014

Int. Cl.: 5

TRADEMARK

PRINCIPAL REGISTER

VEMMA NUTRITION COMPANY (ARIZONA CORPORATION)
8322 EAST HARTFORD DRIVE
SCOTTSDALE, AZ 85255

FOR: SUPPLEMENT GOODS CONTAINING VITAMIN E, NAMELY, MEAL REPLACEMENT DRINKS AND SHAKES FOR WEIGHT LOSS PURPOSES; NUTRITIONAL SUPPLEMENT DRINKS AND SHAKES; NUTRITIONAL SUPPLEMENT DRINKS AND SHAKES FOR USE AS MEAL REPLACEMENT NOT FOR MEDICAL PURPOSES; PROTEIN SUPPLEMENT DRINKS AND SHAKES FOR USE AS MEAL REPLACEMENT NOT FOR MEDICAL PURPOSES; PROTEIN SUPPLEMENT SHAKES; NUTRITIONAL SUPPLEMENT BEVERAGES, NAMELY, WHEY AND/OR VEGAN PROTEIN FOR USE AS A NUTRITIONAL SUPPLEMENT IN READY-TO-MIX POWDERS AND READY-TO-DRINK BEVERAGES; DIETARY SUPPLEMENT BEVERAGES FOR CLEANSING AND DETOXIFYING THE BODY, AIDING IN THE PROMOTION OF SLEEP AND IN THE PROMOTION OF RELAXATION AND FOR USE IN BOOSTING ENERGY, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 8-17-2011; IN COMMERCE 1-3-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-803,050, FILED 12-14-2012.

AMY C. KEAN, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

United States of America
United States Patent and Trademark Office

bodē

Reg. No. 4,477,012

Registered Feb. 4, 2014

Int. Cl.: 5

TRADEMARK

PRINCIPAL REGISTER

VERMA NUTRITION COMPANY (ARIZONA CORPORATION)
8322 EAST HARTFORD DRIVE
SCOTTSDALE, AZ 85255

FOR: SUPPLEMENT GOODS CONTAINING VITAMIN E, NAMELY, MEAL REPLACEMENT DRINKS AND SHAKES FOR WEIGHT LOSS PURPOSES; NUTRITIONAL SUPPLEMENT DRINKS AND SHAKES; NUTRITIONAL SUPPLEMENT DRINKS AND SHAKES FOR USE AS MEAL REPLACEMENT NOT FOR MEDICAL PURPOSES; PROTEIN SUPPLEMENT DRINKS AND SHAKES FOR USE AS MEAL REPLACEMENT NOT FOR MEDICAL PURPOSES; PROTEIN SUPPLEMENT SHAKES; NUTRITIONAL SUPPLEMENT BEVERAGES, NAMELY, WHEY AND/OR VEGAN PROTEIN FOR USE AS A NUTRITIONAL SUPPLEMENT IN READY-TO-MIX POWDERS AND READY-TO-DRINK BEVERAGES; DIETARY SUPPLEMENT BEVERAGES FOR CLEANSING AND DETOXIFYING THE BODY, AIDING IN THE PROMOTION OF SLEEP AND IN THE PROMOTION OF RELAXATION AND FOR USE IN BOOSTING ENERGY, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 8-17-2011; IN COMMERCE 1-3-2012.

THE MARK CONSISTS OF THE WORD "BOD-E" IN LOWER CASE WITH A MACRON OVER THE "E".

SER. NO. 85-803,079, FILED 12-14-2012.

AMY C. KEAN, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office