

ESTTA Tracking number: **ESTTA872615**

Filing date: **01/22/2018**

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 has filed a petition to cancel the registration indicated below.

Petitioner Information

Name	USANA HEALTH SCIENCES, INC.		
Entity	Corporation	Citizenship	Utah
Address	3838 West Parkway Blvd Salt Lake City, UT 84120 UNITED STATES		

Attorney information	Brian Tucker Kirton McConkie 36 South State Street, #1900 Salt Lake City, UT 84111 UNITED STATES Email: btucker@kmclaw.com, kchamberlain@kmclaw.com Phone: 801-239-3147		
----------------------	---	--	--

Registration Subject to Cancellation

Registration No.	5037227	Registration date	09/06/2016
Registrant	Asana Wellness Centers, LLC 207 N. Krome Avenue Homestead, FL 33030 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2016/01/22 First Use In Commerce: 2016/02/12 All goods and services in the class are subject to cancellation, namely: Nutritional supplements
--

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Dilution by blurring	Trademark Act Sections 14(1) and 43(c)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1909069	Application Date	08/07/1992
Registration Date	08/01/1995	Foreign Priority Date	NONE
Word Mark	USANA		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 003. First use: First Use: 1994/05/21 First Use In Commerce: 1994/05/21 non-medicated skin care preparations; namely, facial creams, facial cleansers, facial toners, body lotions, and hand cream skin exfoliant Class 005. First use: First Use: 1992/09/19 First Use In Commerce: 1992/09/19 vitamin, mineral and nutritional supplements

U.S. Registration No.	3247094	Application Date	06/13/2006
Registration Date	05/29/2007	Foreign Priority Date	NONE


Word Mark	USANA
-----------	-------

Design Mark	
-------------	--

Description of Mark	NONE
---------------------	------

Goods/Services	Class 005. First use: First Use: 1992/07/20 First Use In Commerce: 1992/07/20 Health foods, namely, nutritional drinkmixes for use as meal replacements, and energy, fiber and nutrition bars, namely, food bars for use as meal replacements Class 029. First use: First Use: 2001/10/01 First Use In Commerce: 2001/10/01 Health foods, namely, fiber and fatty acid food bars, namely, fruit and vegetable-based food bars, and soy-based food bars Class 032. First use: First Use: 2001/10/01 First Use In Commerce: 2001/10/01 Health foods, namely, soy-based protein drink mixes not being milk substitutes
----------------	---

U.S. Registration No.	4467749	Application Date	01/22/2013
Registration Date	01/14/2014	Foreign Priority Date	NONE
Word Mark	USANA HEALTH SCIENCES		

Design Mark			
Description of Mark	The mark consists of a globe design with human figures within the globe and with the words "USANA HEALTH SCIENCES" under the globe design.		
Goods/Services	<p>Class 005. First use: First Use: 2013/08/14 First Use In Commerce: 2013/08/14 Vitamin, mineral and nutritional supplements, and health foods, namely, nutritional supplement drink mixes for use as meal replacements, and nutritional supplement energy and fiber food bars for use as meal replacements</p> <p>Class 016. First use: First Use: 2012/08/15 First Use In Commerce: 2012/08/15 Magazines featuring information about health and direct selling; books in the field of health and direct selling, newspapers, workbooks directed to health and direct selling; and other printed matter, namely, written articles in the field of health and direct selling; stationery</p> <p>Class 029. First use: First Use: 2013/08/14 First Use In Commerce: 2013/08/14 Health foods, namely, fiber and fatty acid food bars, namely, fruit and vegetable-based food bars, and soy-based food bars; health foods, namely, fruit-and vegetable-based energy, fiber and nutritionbars in the nature of food bars for use as meal replacements</p> <p>Class 030. First use: First Use: 2013/08/14 First Use In Commerce: 2013/08/14 Health foods, namely, cereal-based energy, fiber and nutrition bars in the nature of food bars for use as meal replacements</p> <p>Class 032. First use: First Use: 2013/08/14 First Use In Commerce: 2013/08/14 Health foods, namely, soy-based protein drink mixes not being milk substitutes and preparations for making beverages, namely, carbonated and non-carbonated sports drinks and energy drinks</p>		
U.S. Registration No.	4471504	Application Date	03/22/2012
Registration Date	01/21/2014	Foreign Priority Date	NONE
Word Mark	USANA BABYCARE		

Design Mark	USANA BABYCARE
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2013/04/19 First Use In Commerce: 2013/04/19 Dietary Supplements

U.S. Registration No.	5152140	Application Date	10/15/2015
Registration Date	02/28/2017	Foreign Priority Date	NONE
Word Mark	USANA MYSMART		
Design Mark	USANA MYSMART		
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 2016/08/25 First Use In Commerce: 2016/08/25 Health foods, namely, nutritional supplement drink mixes for use as meal replacements, and nutritional supplement energy and fiber food bars for use as meal replacements</p> <p>Class 029. First use: First Use: 2016/05/16 First Use In Commerce: 2016/05/16 Health foods, namely, soy-based food bars high in fiber; health foods, namely, nut-based nutrition bars in the nature of high-fiber food bars for use as meal replacements</p> <p>Class 030. First use: First Use: 2016/05/16 First Use In Commerce: 2016/05/16 Health foods, namely, chocolate-based, high-fiber food bars and drink mixes for use as meal replacements</p> <p>Class 032. First use: First Use: 2016/05/16 First Use In Commerce: 2016/05/16 Health foods, namely, soy-based drink mixes high in fiber and protein not being-milk substitutes</p>		

Attachments	78907159#TMSN.png(bytes) 85829529#TMSN.png(bytes) 85577096#TMSN.png(bytes) 86789378#TMSN.png(bytes) Petition for Cancelation of ASANA.pdf(1940796 bytes)
-------------	---

Signature	/Brian Tucker/
Name	Brian Tucker
Date	01/22/2018

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

Trademark: ASANA
Reg. No: 5,037,227
Filed: January 13, 2015
Registered: September 6, 2016

USANA HEALTH SCIENCES, INC., a
Utah corporation,

Petitioner,

v.

ASANA WELLNESS CENTERS, LLC, a
Florida limited liability company,

Registrant.

Cancelation No.: _____

PETITION FOR CANCELTATION

Pursuant to Section 14 of the Trademark Act of 1946 (the "Lanham Act"), 15 U.S.C. § 1064, Petitioner USANA Health Sciences, Inc. ("Petitioner"), a corporation organized and existing under the laws of the State of Utah, with its principal place of business at 3838 West Parkway Blvd, Salt Lake City, Utah 84120, believes that it is or will be damaged by the continued registration of Asana Wellness Centers, LLC's ("Registrant") ASANA trademark in class 005 as shown in Registration No. 5,037,227 and hereby petitions to cancel the same.

As grounds for this cancelation, it is alleged that:

1. Petitioner, either directly or through its predecessors-in-interest, principals, and/or commonly owned sister corporations, is now and has for more than 20 years been engaged in the development, marketing, promotion, and distribution of nutritional supplements and related goods.

2. Petitioner's nutritional supplements are sold under the USANA brand and are available online (*see* <https://usana.com/ux/cart/#/category/123>) as well as through many direct selling associates throughout the world. In fact, Usana is one of the largest direct selling companies in the world.

3. Petitioner is the owner of a number of trademark registrations for the mark USANA and similar marks that include USANA which cover nutritional supplements and other goods in class 005 including U.S. Reg. Nos.: 1,909,069; 3,247,094; 4,467,749; 4,471,504; and 5,152,140 which are attached as Exhibit 1.

4. Petitioner recently became aware of U.S. Registration No: 5,037,227 (the '227 Registration) for the mark ASANA covering nutritional supplements in class 005.

5. The marks ASANA and USANA appear very similar and sound very similar.

6. The '227 Registration covers the exact same goods - nutritional supplements – as Petitioner's USANA registrations.

7. Given the direct selling technique employed by Petitioner, consumers are likely to encounter USANA and ASANA nutritional supplements. Given Petitioner's long history and success, consumers are also likely to be familiar with the USANA brand and know that Petitioner is the source of USANA nutritional supplements.

8. These similarities are likely to cause confusion since consumers are likely to believe that the ASANA nutritional supplements are either USANA nutritional supplements or are somehow associated with or sponsored by Petitioner.

Opposer will therefore be damaged by the continued registration of the ASANA mark in class 005 and requests that the class 005 goods be cancelled from the '227 Registration. In the alternative, the continued registration of the ASANA mark will dilute the ability of the USANA mark to distinguish Petitioner's goods and should therefore be cancelled.

DATED: Salt Lake City, Utah
January 22, 2018

Respectfully submitted,

KIRTON McCONKIE

By: *Brian Tucker*

Brian Tucker
36 S. State State, #1900
Salt Lake City, Utah 84111

*Attorney for Petitioner
USANA Health Sciences, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of January 2018, I served a copy of the foregoing **PETITION FOR CANCELTION** on the Registrant, as designated below, by mailing and emailing a copy to the following addresses:

Allison R. Imber
Allen Dyer Doppelt Milbrath & Gilchrist P A
255 S Orange Ave, Ste. 1401
Orlando, Florida 32801
aimber@addmg.com

/Brian Tucker/

EXHIBIT 1

Int. Cls.: 3 and 5

Prior U.S. Cls.: 1, 4, 6, 18, 50, 51, and 52

United States Patent and Trademark Office

Reg. No. 1,909,069

Registered Aug. 1, 1995

TRADEMARK PRINCIPAL REGISTER

USANA

**USANA, INC. (UTAH CORPORATION)
890 EAST 5400 SOUTH
SALT LAKE CITY, UT 84107**

FOR: NON-MEDICATED SKIN CARE PREPARATIONS; NAMELY, FACIAL CREAMS, FACIAL CLEANSERS, FACIAL TONERS, BODY LOTIONS, AND HAND CREAM SKIN EXFOLIANT, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 5-21-1994; IN COMMERCE 5-21-1994.

FOR: VITAMIN, MINERAL AND NUTRITIONAL SUPPLEMENTS, IN CLASS 5 (U.S. CL. 18).

FIRST USE 9-19-1992; IN COMMERCE 9-19-1992.

SN 74-303,076, FILED 8-7-1992.

JULIA A. HARDY, EXAMINING ATTORNEY

Int. Cls.: 5, 29 and 32

Prior U.S. Cls.: 6, 18, 44, 45, 46, 48, 51 and 52

Reg. No. 3,247,094

United States Patent and Trademark Office

Registered May 29, 2007

**TRADEMARK
PRINCIPAL REGISTER**

USANA

USANA HEALTH SCIENCES, INC. (UTAH CORPORATION)
ATTN.: LEGAL SERVICES DEPARTMENT
3838 WEST PARKWAY BOULEVARD
SALT LAKE CITY, UT 841206336

FOR: HEALTH FOODS, NAMELY, NUTRITIONAL DRINK MIXES FOR USE AS MEAL REPLACEMENTS, AND ENERGY, FIBER AND NUTRITION BARS, NAMELY, FOOD BARS FOR USE AS MEAL REPLACEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 7-20-1992; IN COMMERCE 7-20-1992.

FOR: HEALTH FOODS, NAMELY, FIBER AND FATTY ACID FOOD BARS, NAMELY, FRUIT AND VEGETABLE-BASED FOOD BARS, AND SOY-BASED FOOD BARS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 10-1-2001; IN COMMERCE 10-1-2001.

FOR: HEALTH FOODS, NAMELY, SOY-BASED PROTEIN DRINK MIXES NOT BEING MILK SUBSTITUTES, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 10-1-2001; IN COMMERCE 10-1-2001.

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

SER. NO. 78-907,159, FILED 6-13-2006.

ALEX KEAM, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

USANA BABY CARE

Reg. No. 4,471,504

Registered Jan. 21, 2014

Int. Cl.: 5

TRADEMARK

PRINCIPAL REGISTER

USANA HEALTH SCIENCES, INC. (UTAH CORPORATION), AKA USANA, INC.,
3838 WEST PARKWAY BLVD.
SALT LAKE CITY, UT 84120

FOR: DIETARY SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 4-19-2013; IN COMMERCE 4-19-2013.

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

OWNER OF U.S. REG. NOS. 1,909,069 AND 3,247,094.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BABY CARE", APART FROM THE MARK AS SHOWN.

SN 85-577,096, FILED 3-22-2012.

JANET LEE, 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



Reg. No. 4,467,749

Registered Jan. 14, 2014

**Int. Cls.: 5, 16, 29, 30,
and 32**

TRADEMARK

PRINCIPAL REGISTER

USANA HEALTH SCIENCES, INC. (UTAH CORPORATION), DBA USANA, INC.,
3838 WEST PARKWAY BLVD.
SALT LAKE CITY, UT 84120

FOR: VITAMIN, MINERAL AND NUTRITIONAL SUPPLEMENTS, AND HEALTH FOODS,
NAMESLY, NUTRITIONAL SUPPLEMENT DRINK MIXES FOR USE AS MEAL REPLACEMENTS,
AND NUTRITIONAL SUPPLEMENT ENERGY AND FIBER FOOD BARS FOR USE
AS MEAL REPLACEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 8-14-2013; IN COMMERCE 8-14-2013.

FOR: MAGAZINES FEATURING INFORMATION ABOUT HEALTH AND DIRECT SELLING;
BOOKS IN THE FIELD OF HEALTH AND DIRECT SELLING, NEWSPAPERS, WORKBOOKS
DIRECTED TO HEALTH AND DIRECT SELLING; AND OTHER PRINTED MATTER,
NAMESLY, WRITTEN ARTICLES IN THE FIELD OF HEALTH AND DIRECT SELLING;
STATIONERY, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 8-15-2012; IN COMMERCE 8-15-2012.

FOR: HEALTH FOODS, NAMESLY, FIBER AND FATTY ACID FOOD BARS, NAMESLY, FRUIT
AND VEGETABLE-BASED FOOD BARS, AND SOY-BASED FOOD BARS; HEALTH FOODS,
NAMESLY, FRUIT AND VEGETABLE-BASED ENERGY, FIBER AND NUTRITION BARS
IN THE NATURE OF FOOD BARS FOR USE AS MEAL REPLACEMENTS, IN CLASS 29
(U.S. CL. 46).

FIRST USE 8-14-2013; IN COMMERCE 8-14-2013.

FOR: HEALTH FOODS, NAMESLY, CEREAL-BASED ENERGY, FIBER AND NUTRITION
BARS IN THE NATURE OF FOOD BARS FOR USE AS MEAL REPLACEMENTS, IN CLASS
30 (U.S. CL. 46).

FIRST USE 8-14-2013; IN COMMERCE 8-14-2013.

FOR: HEALTH FOODS, NAMESLY, SOY-BASED PROTEIN DRINK MIXES NOT BEING MILK
SUBSTITUTES AND PREPARATIONS FOR MAKING BEVERAGES, NAMESLY, CARBONATED
AND NON-CARBONATED SPORTS DRINKS AND ENERGY DRINKS, IN CLASS 32
(U.S. CLS. 45, 46 AND 48).



Michelle K. Lee
Deputy Director of the United States
Patent and Trademark Office

Reg. No. 4,467,749 FIRST USE 8-14-2013; IN COMMERCE 8-14-2013.

OWNER OF U.S. REG. NOS. 1,909,069, 3,247,094, AND 3,957,226.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HEALTH SCIENCES", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF A GLOBE DESIGN WITH HUMAN FIGURES WITHIN THE GLOBE AND WITH THE WORDS "USANA HEALTH SCIENCES" UNDER THE GLOBE DESIGN.

SN 85-829,529, FILED 1-22-2013.

VIVIAN MICZNIK FIRST, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

USANA MYSMART

Reg. No. 5,152,140

Registered Feb. 28, 2017

Int. Cl.: 5, 29, 30, 32

Trademark

Principal Register

USANA Health Sciences, Inc. (UTAH CORPORATION), DBA USANA, Inc. ,
3838 West Parkway Blvd.
Salt Lake City, UT 84120

CLASS 5: Health foods, namely, nutritional supplement drink mixes for use as meal replacements, and nutritional supplement energy and fiber food bars for use as meal replacements

FIRST USE 8-25-2016; IN COMMERCE 8-25-2016

CLASS 29: Health foods, namely, soy-based food bars high in fiber; health foods, namely, nut-based nutrition bars in the nature of high-fiber food bars for use as meal replacements

FIRST USE 5-16-2016; IN COMMERCE 5-16-2016

CLASS 30: Health foods, namely, chocolate-based, high-fiber food bars and drink mixes for use as meal replacements

FIRST USE 5-16-2016; IN COMMERCE 5-16-2016

CLASS 32: Health foods, namely, soy-based drink mixes high in fiber and protein not being milk substitutes

FIRST USE 5-16-2016; IN COMMERCE 5-16-2016

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

SER. NO. 86-789,378, FILED 10-15-2015

JENNIFER ELLEN MARINO, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office