

ESTTA Tracking number: **ESTTA896734**

Filing date: **05/15/2018**

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	Harper Innovations Limited		
Entity	Limited Liability Company	Citizenship	United Kingdom
Address	Wyvern Avenue, Unit 3 Sovereign Business Park Stockport, Cheshire, SK5 7DD UNITED KINGDOM		

Attorney information	CHARLES J. MEYER WOODARD, EMHARDT, MORIARTY, MCNETT & HENRY LLP 111 MONUMENT CIRCLE, SUITE 3700 INDIANAPOLIS, IN 46204 UNITED STATES Email: cjmeyer@uspatent.com, danielle@uspatent.com, docket-dept@uspatent.com Phone: (317) 634-3456		
----------------------	---	--	--

### Registrations Subject to Cancellation

Registration No.	4278851	Registration date	01/22/2013
Registrant	Carlos Ramirez PO Box 671 Sag Harbor, NY 11963 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 032. First Use: 2011/04/05 First Use In Commerce: 2011/05/01 All goods and services in the class are subject to cancellation, namely: Fruit beverages; Fruit drinks and fruitjuices; Fruit drinks and juices; Fruit flavored drinks; Fruit flavoured drinks;Fruit juice; Fruit juices; Fruit-flavored beverages; Fruit-flavoured beverages;Smoothies; Vegetable-fruit juices
---

### Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)		
Registration No.	4308046	Registration date	03/26/2013
Registrant	Carlos Ramirez PO Box 671 Sag Harbor, NY 11963 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 032. First Use: 2011/04/05 First Use In Commerce: 2011/05/01
--

All goods and services in the class are subject to cancellation, namely: Fruit beverages; Fruit drinks and fruitjuices; Fruit drinks and juices; Fruit flavored drinks; Fruit flavoured drinks;Fruit juice; Fruit juices; Fruit juicesand fruit drinks; Fruit-based beverages; Fruit-flavored beverages; Fruit-flavoured beverages; Mixed fruit juice; Smoothies; Vegetable-fruit juices

## Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
-------------	-----------------------------

Attachments	Petition to Cancel - MUSCLE SMOOTHIES.pdf(224588 bytes )
-------------	--

Signature	/Charles J. Meyer/
-----------	--------------------

Name	Charles J. Meyer
------	------------------

Date	05/15/2018
------	------------

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

In the matter of trademark Registration Nos. 4,278,851 and 4,308,046  
For the marks: MOOSE SMOOTHIES  
MOOSE SMOOTHIES & Design  
Date Registered: January 22, 2013 and March 26, 2013

_____	)	
Harper Innovations Limited	)	Cancellation No. _____
	)	
Petitioner	)	
	)	
v.	)	
	)	
Carlos Ramirez	)	
	)	
Registrant	)	
_____	)	

**PETITION TO CANCEL**

Petitioner’s name, address and entity information is as follows: Harper Innovations Limited, a UK limited liability company, having a principle place of business at Wyvern Avenue, Unit 3, Sovereign Business Park, Stockport, Cheshire, United Kingdom SK5 7DD.

To the best of Petitioner’s knowledge the name and address of the current owner of the registrations is: Carlos Ramirez, P.O. Box 671, Sag Harbor, New York 11963.

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

The grounds for cancellation are as follows:

1. Trademark Registration No. 4,278,851 is for the mark MOOSE SMOOTHIES for "fruit beverages; fruit drinks and fruit juices; fruit drinks and juices; fruit flavored drinks; fruit flavoured drinks; fruit juice; fruit juices; fruit-flavored beverages; fruit-flavoured beverages; smoothies; vegetable-fruit juices," in International Class 032. The date of the registration is January 22, 2013.

2. Trademark Registration No. 4,308,046 is for the mark MOOSE SMOOTHIES & Design for " fruit beverages; fruit drinks and fruit juices; fruit drinks and juices; fruit flavored drinks; fruit flavoured drinks; fruit juice; fruit juices; fruit juices and fruit drinks; fruit-based beverages; fruit-flavored beverages; fruit-flavoured beverages; mixed fruit juice; smoothies; vegetable-fruit juices," in International Class 032. The date of the registration is March 26, 2013.

3. Petitioner is the owner of United States Trademark Application No. 87/322,195 for the mark MOOSE JUICE & Design for "Mineral and aerated waters; Non-alcoholic beverages containing fruit juices; non-alcoholic beverages, namely, carbonated beverages; Nutritionally fortified non-alcoholic beverages containing fruit juices; nutritionally fortified non-alcoholic beverages, namely, carbonated beverages; Vitamin fortified non-alcoholic beverages containing fruit juices; vitamin fortified non-alcoholic beverages, namely, carbonated beverages; Sports and energy drinks enhanced with vitamins, minerals and nutrients; Energy drinks containing caffeine; Protein-enriched non-alcoholic beverages; Fruit beverages and fruit juices; Syrups for making beverages; preparations for making beverages, namely, sports drinks, energy drinks, soft drinks, fruit drinks; Whey beverages; Isotonic beverages," in International Class 32; and "Retail and wholesale services, including by way of the Internet or mobile application, connected with the sale of: Mineral and aerated waters, Non-alcoholic beverages, Nutritionally

fortified non-alcoholic beverages, Vitamin fortified non-alcoholic beverages, Sports and energy drinks enhanced with vitamins, minerals and nutrients, Energy drinks containing caffeine, Protein-enriched non-alcoholic beverages, Fruit beverages and fruit juices, Syrups and other preparations for making beverages, Whey beverages, Isotonic beverages; information and advisory services relating to the aforesaid services,” in International Class 35.

4. Petitioner’s Application No. 87/322,195 has been rejected by the United States Patent and Trademark Office in view of Registration Nos. 4,278,851 and 4,308,046.

5. By Office Action dated May 2, 2017 and a Final Office Action dated November 16, 2017 Petitioner was advised that the Examining Attorney refused registration of Petitioner’s mark Serial No. 87/322,195 under § 2(d) (an alleged likelihood of confusion) in view of Registrant’s Registration Nos. 4,278,851 and 4,308,046 for MOOSE SMOOTHIES and MOOSE SMOOTHIES & Design.

6. Petitioner is the owner of United States Trademark Application No. 87/502,735 for the mark MOOSE JUICE for “Mineral and aerated waters; Non-alcoholic beverages containing fruit juices; non-alcoholic beverages, namely, carbonated beverages; Nutritionally fortified non-alcoholic beverages containing fruit juices; nutritionally fortified non-alcoholic beverages, namely, carbonated beverages; Vitamin fortified non-alcoholic beverages containing fruit juices; vitamin fortified non-alcoholic beverages, namely, carbonated beverages; Sports and energy drinks enhanced with vitamins, minerals and nutrients; Energy drinks containing caffeine; Protein-enriched non-alcoholic beverages; Fruit beverages and fruit juices; Syrups for making beverages; preparations for making beverages, namely, sports drinks, energy drinks, soft drinks, fruit drinks; Whey beverages; Isotonic beverages,” in International Class 32; and “Retail and wholesale services, including by way of the Internet or mobile application, connected with the

sale of: Mineral and aerated waters, Non-alcoholic beverages, Nutritionally fortified non-alcoholic beverages, Vitamin fortified non-alcoholic beverages, Sports and energy drinks enhanced with vitamins, minerals and nutrients, Energy drinks containing caffeine, Protein-enriched non-alcoholic beverages, Fruit beverages and fruit juices, Syrups and other preparations for making beverages, Whey beverages, Isotonic beverages; information and advisory services relating to the aforesaid services,” in International Class 35.

7. Petitioner’s Application No. 87/502,735 has been rejected by the United States Patent and Trademark Office in view of Registration Nos. 4,278,851 and 4,308,046.

8. By Office Action dated September 25, 2017 and a Final Office Action dated April 5, 2018 Petitioner was advised that the Examining Attorney refused registration of Petitioner’s mark Serial No. 87/502,735 under § 2(d) (an alleged likelihood of confusion) in view of Registrant’s Registration Nos. 4,278,851 and 4,308,046 for MOOSE SMOOTHIES and MOOSE SMOOTHIES & Design.

9. Petitioner is the owner of United States Trademark Application No. 87/321,958 for the mark MUSCLE MOOSE & Design for various goods in classes 5, 25, 29, 30, 32 and 35. The classes affected by the prior cited registrations are for “Mineral and aerated waters; Non-alcoholic beverages containing fruit juices; non-alcoholic beverages, namely, carbonated beverages; Nutritionally fortified non-alcoholic beverages containing fruit juices; nutritionally fortified non-alcoholic beverages, namely, carbonated beverages; Vitamin fortified non-alcoholic beverages containing fruit juices; vitamin fortified non-alcoholic beverages, namely, carbonated beverages; Sports and energy drinks enhanced with vitamins, minerals and nutrients; Energy drinks containing caffeine; Protein-enriched non-alcoholic beverages; Fruit beverages and fruit juices; Syrups for making beverages; preparations for making beverages, namely, sports drinks,

energy drinks, soft drinks, fruit drinks; Whey beverages; Isotonic beverages; Grain-based beverages; Meal replacement drinks not for medical use being vegetable-based drinks, fruit-based drinks, fruit juices and soft drinks; Meal replacement drink mixes and concentrate not for medical use being mixes and concentrates for vegetable-based drinks, fruit-based drinks, fruit juices and soft drinks; carbohydrate based nutritional meal replacement drink mix not for medical use being mixes for vegetable-based drinks, fruit-based drinks, fruit juices and soft drinks," in International Class 32; and "Retail and wholesale services, including by way of the Internet or mobile application, connected with the sale of: Dietary and nutritional supplements for humans, Vitamin and mineral supplements for humans, Herbal supplements for general health and well-being, Whey protein supplements, Protein supplement drinks, Liquid protein supplements, Liquid and powdered food supplement preparations, Liquid and powdered nutritional supplement drink mixes and concentrate, Meal replacement drinks, Meal replacement drink mixes and concentrate, Vitamin fortified beverages for medical purposes, Nutritionally fortified beverages for medical purposes, Nutritional supplement energy bars, Nutritional supplement meal replacement bars and snacks, Effervescent vitamin tablets, Clothing, Sportswear, Footwear, Headgear, Prepared meals consisting principally of meat or fish or poultry or game or vegetables, Frozen meals consisting principally of meat or fish or poultry or game or vegetables, Preserved or frozen or dried and cooked fruits and vegetables, Milk and milk products, Chilled dairy desserts, Protein milk, Beverages made from dairy products, Soya-based beverages used as milk substitutes, Coconut-based beverages used as milk substitutes, Fruit-based food, Non-alcoholic fruit extracts for use as ingredients of nutritional supplements and vitamins, Fruit-based snack foods and bars, Nut-based snack foods and bars, Pulsebased snack foods and bars, Seed-based snack foods and bars, Coffee-based beverages, tea-based beverages, chocolate-based beverages,

cocoa-based beverages, Flavourings for food and beverages, Grain-based beverages, Food preparations made from cereals, Cereal-based snack foods, Confectionery, Gluten-free confectionery, Gluten-free cereal-based snack foods, Gluten-free desserts, Mousse, Chilled desserts, Dairy-free confectionery, Dairy-free desserts, Cereal bars and energy bars, High protein cereal bars, High-protein dairy-based mix for making desserts, Carbohydrate-based nutritional meal replacement drink mix, maltodextrins for nutritional use, Mineral and aerated waters, Non-alcoholic beverages, Nutritionally fortified non-alcoholic beverages, Vitamin fortified non-alcoholic beverages, Sports and energy drinks enhanced with vitamins, minerals and nutrients, Energy drinks containing caffeine, Protein-enriched non-alcoholic beverages, Fruit beverages and fruit juices, Syrups and other preparations for making beverages, Whey beverages, Isotonic beverages; information and advisory services relating to the aforesaid services,” in International Class 35.

10. Petitioner’s Application No. 87/321,958 has been rejected by the United States Patent and Trademark Office in view of Registration Nos. 4,278,851 and 4,308,046.

11. By Office Action dated November 20, 2017 Petitioner was advised that the Examining Attorney refused registration of Petitioner’s mark Serial No. 87/321,958 in class 32 and 35 under § 2(d) (an alleged likelihood of confusion) in view of Registrant’s Registration Nos. 4,278,851 and 4,308,046 for MOOSE SMOOTHIES and MOOSE SMOOTHIES & Design.

12. Petitioner is the owner of United States Trademark Application No. 87/502,750 for the mark MUSCLE MOOSE for various goods in classes 5, 25, 29, 30, 32 and 35. The classes affected by the prior cited registrations are for “Mineral and aerated waters; Non-alcoholic beverages containing fruit juices; non-alcoholic beverages, namely, carbonated beverages; Nutritionally fortified non-alcoholic beverages containing fruit juices; nutritionally

fortified non-alcoholic beverages, namely, carbonated beverages; Vitamin fortified non-alcoholic beverages containing fruit juices; vitamin fortified non-alcoholic beverages, namely, carbonated beverages; Sports and energy drinks enhanced with vitamins, minerals and nutrients; Energy drinks containing caffeine; Protein-enriched non-alcoholic beverages; Fruit beverages and fruit juices; Syrups for making beverages; preparations for making beverages, namely, sports drinks, energy drinks, soft drinks, fruit drinks; Whey beverages; Isotonic beverages; Grain-based beverages; Meal replacement drinks not for medical use being vegetable-based drinks, fruit-based drinks, fruit juices and soft drinks; Meal replacement drink mixes and concentrate not for medical use being mixes and concentrates for vegetable-based drinks, fruit-based drinks, fruit juices and soft drinks; carbohydrate based nutritional meal replacement drink mix not for medical use being mixes for vegetable-based drinks, fruit-based drinks, fruit juices and soft drinks," in International Class 32; and "Retail and wholesale services, including by way of the Internet or mobile application, connected with the sale of: Dietary and nutritional supplements for humans, Vitamin and mineral supplements for humans, Herbal supplements for general health and well-being, Whey protein supplements, Protein supplement drinks, Liquid protein supplements, Liquid and powdered food supplement preparations, Liquid and powdered nutritional supplement drink mixes and concentrate, Meal replacement drinks, Meal replacement drink mixes and concentrate, Vitamin fortified beverages for medical purposes, Nutritionally fortified beverages for medical purposes, Nutritional supplement energy bars, Nutritional supplement meal replacement bars and snacks, Effervescent vitamin tablets, Clothing, Sportswear, Footwear, Headgear, Prepared meals consisting principally of meat or fish or poultry or game or vegetables, Frozen meals consisting principally of meat or fish or poultry or game or vegetables, Preserved or frozen or dried and cooked fruits and vegetables, Milk and milk products, Chilled dairy

desserts, Protein milk, Beverages made from dairy products, Soya-based beverages used as milk substitutes, Coconut-based beverages used as milk substitutes, Fruit-based food, Non-alcoholic fruit extracts for use as ingredients of nutritional supplements and vitamins, Fruit-based snack foods and bars, Nut-based snack foods and bars, Pulsebased snack foods and bars, Seed-based snack foods and bars, Coffee-based beverages, tea-based beverages, chocolate-based beverages, cocoa-based beverages, Flavourings for food and beverages, Grain-based beverages, Food preparations made from cereals, Cereal-based snack foods, Confectionery, Gluten-free confectionery, Gluten-free cereal-based snack foods, Gluten-free desserts, Mousse, Chilled desserts, Dairy-free confectionery, Dairy-free desserts, Cereal bars and energy bars, High protein cereal bars, High-protein dairy-based mix for making desserts, Carbohydrate-based nutritional meal replacement drink mix, maltodextrins for nutritional use, Mineral and aerated waters, Non-alcoholic beverages, Nutritionally fortified non-alcoholic beverages, Vitamin fortified non-alcoholic beverages, Sports and energy drinks enhanced with vitamins, minerals and nutrients, Energy drinks containing caffeine, Protein-enriched non-alcoholic beverages, Fruit beverages and fruit juices, Syrups and other preparations for making beverages, Whey beverages, Isotonic beverages; information and advisory services relating to the aforesaid services,” in International Class 35.

13. Petitioner’s Application No. 87/502,750 has been rejected by the United States Patent and Trademark Office in view of Registration Nos. 4,278,851 and 4,308,046.

14. By Office Action dated April 5, 2018 Petitioner was advised that the Examining Attorney refused registration of Petitioner’s mark Serial No. 87/502,750 in class 32 and 35 under § 2(d) (an alleged likelihood of confusion) in view of Registrant’s Registration Nos. 4,278,851 and 4,308,046 for MOOSE SMOOTHIES and MOOSE SMOOTHIES & Design.

15. Petitioner has a reasonable belief that Petitioner's applications will be refused in view of Registrant's registrations.

**COUNT 1 – ABANDONMENT**

16. Upon information and belief, Registrant has abandoned the challenged marks and the Registrant is no longer using the marks MOOSE SMOOTHIES and MOOSE SMOOTHIES & Design marks for "fruit beverages; fruit drinks and fruit juices; fruit drinks and juices; fruit flavored drinks; fruit flavoured drinks; fruit juice; fruit juices; fruit-flavored beverages; fruit-flavoured beverages; smoothies; vegetable-fruit juices."

17. Upon information and belief, Registrant is not currently using the mark MOOSE SMOOTHIES and MOOSE SMOOTHIES & Design marks in commerce in the United States.

18. Petitioner can find no current use of MOOSE SMOOTHIES and MOOSE SMOOTHIES & Design marks for "fruit beverages; fruit drinks and fruit juices; fruit drinks and juices; fruit flavored drinks; fruit flavoured drinks; fruit juice; fruit juices; fruit-flavored beverages; fruit-flavoured beverages; smoothies; vegetable-fruit juices," by the Registrant on their website or through further searching.

19. Petitioner requested Registrant to provide evidence of current use of the MOOSE SMOOTHIES and MOOSE SMOOTHIES & Design marks. Registrant failed to do so.

20. Upon information and belief, Registrant does not currently have a bona fide intent to use the MOOSE SMOOTHIES and MOOSE SMOOTHIES & Design marks in commerce in the United States with any goods in Class 32.

21. The Registrant's registrations should be canceled in whole.

