

ESTTA Tracking number: **ESTTA905360**

Filing date: **06/25/2018**

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	Priority One Nutritional Supplements, Inc.		
Entity	Corporation	Citizenship	Washington
Address	2681 Delta Ring Rd. Ferndale, WA 98248 UNITED STATES		

Attorney information	Mark P. Walters Lowe Graham Jones PLLC 701 Fifth Avenue, Suite 4800 Seattle, WA 98104 UNITED STATES Email: walters@lowegrahamjones.com, dolder@lowegrahamjones.com, litdocketing@lowegrahamjones.com Phone: 206.381.3300
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**Registration Subject to Cancellation**

Registration No.	4996633	Registration date	07/12/2016
Registrant	Priority Nutrition LLC 320 Amherst Street Winchester, VA 22601 UNITED STATES Email: prioritynutritionplans@gmail.com		

**Goods/Services Subject to Cancellation**


Class 016. First Use: 2015/10/25 First Use In Commerce: 2015/11/01 All goods and services in the class are subject to cancellation, namely: Weight loss program kits consisting primarily of printed customized meal plans and advice in the form of pamphlets on weight loss and dieting, and also including vitamin supplements and hormones
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Abandonment	Trademark Act Section 14(3)

**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application No.	87518077	Application Date	07/06/2017
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	PRIORITY ONE NUTRITIONAL SUPPLEMENTS
Design Mark	 <p>The logo features a stylized leaf icon on the left, followed by the text "Priority One" in a large, elegant serif font. Below "Priority One" is the text "Nutritional Supplements" in a smaller, simpler font.</p>
Description of Mark	The mark consists of a leaf superimposed on a circle. To the right is the stylized wording "Priority One" above the stylized wording "Nutritional Supplements."
Goods/Services	Class 005. First use: First Use: 1987/12/31 First Use In Commerce: 1987/12/31 Dietary supplements for human consumption distributed to end users under supervision of medical professionals; food supplements for human consumption distributed to end users under supervision of medical professionals; nutritional supplements for human consumption distributed to end users under supervision of medical professionals; vitamin supplements for human consumption distributed to end users under supervision of medical professionals

Attachments	87518077#TMSN.png( bytes ) PONE-2-1001PETCANCEL.pdf(168419 bytes )
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Signature	/Mark P. Walters/
Name	Mark P. Walters
Date	06/25/2018

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

PRIORITY ONE NUTRITIONAL  
SUPPLEMENTS, INC., a limited liability  
company of the State of Washington

Petitioner

v.

PRIORITY NUTRITION LLC, a limited liability  
company of the State of Virginia

Respondent.

Cancellation No.

Mark: PRIORITY NUTRITION  
and Design

Reg. No. 4,996,633

Reg. Date: July 12, 2016

PETITION FOR CANCELLATION

Petitioner PRIORITY ONE NUTRITIONAL SUPPLEMENTS INC., a limited liability company organized under the laws of the State of Washington having a place of business at 2681 Delta Ring Rd., Ferndale, Washington 98248, (hereafter “Petitioner”), believes that it is or will be damaged by Registration No. 4,996,633 for the term PRIORITY NUTRITION & Design owned by Registrant PRIORITY NUTRITION LLC (“Registrant”) and hereby petitions to cancel the same. To the best of Petitioner’s knowledge, the address of the current owner of Registration No. 4,996,633 is 320 Amherst Street, Winchester, Virginia 22601.

The grounds for cancellation are as follows:

**A. Prior Use**

1. The Application Serial No. 87/518,077 for the mark PRIORITY ONE NUTRITIONAL SUPPLEMENTS & Design (“the ’077 Application”) was filed July 6, 2017, in the International Class 05 for the goods (as amended) as follows: Dietary supplements for human

consumption distributed to end users under supervision of medical professionals; food supplements for human consumption distributed to end users under supervision of medical professionals; nutritional supplements for human consumption distributed to end users under supervision of medical professionals; vitamin supplements for human consumption distributed to end users under supervision of medical professionals (hereinafter “the Applied-for Goods”). The ’077 Application claims actual use in commerce at least as early as December 31, 1987.

2. As set forth below, Petitioner has been using the mark PRIORITY ONE NUTRITIONAL SUPPLEMENTS & Design in commerce in connection with at least the Applied-for Goods since at least as early as December 31, 1987. Petitioner’s mark PRIORITY ONE NUTRITIONAL SUPPLEMENTS & Design is symbolic of extensive goodwill and consumer recognition built up by Petitioner through the advertising and promoting of the Applied-for Goods.

3. In a final office action dated April 20, 2018 for the ’077 Application, the examining attorney cited Registration No. 4,996,633 (“the ’633 Registration”) for the mark PRIORITY NUTRITION & Design for “weight loss program kits consisting primarily of printed customized meal plans and advice in the form of pamphlets on weight loss and dieting, and also including vitamin supplements and hormones” (hereinafter the “Registered Goods”) as the basis for a rejection of Petitioner’s mark PRIORITY ONE NUTRITIONAL SUPPLEMENTS & Design under Trademark Act Section 2(d), 15 U.S.C. § 1052(2) (Likelihood of Confusion).

4. The Application Serial No. 86/806,044 for PRIORITY NUTRITION & Design was filed November 1, 2015, claiming a date for first use anywhere of October 25, 2015 and a date for first use in commerce of November 1, 2015. The ’633 Registration issued on the Principal Register on July 12, 2016.

5. Petitioner has been using its mark PRIORITY ONE NUTRITIONAL SUPPLEMENTS & Design consistently in interstate commerce in connection with at least the Applied-for Goods since at least as early as December 31, 1987

6. The Examining Attorney has noted a high probability for a likelihood of confusion between Petitioner’s senior mark PRIORITY ONE NUTRITIONAL SUPPLEMENTS & Design

and the Registrant's junior mark PRIORITY ONE NUTRITIONAL SUPPLEMENTS & Design for the Applied-for Goods and Services. According to the examining attorney, "[a] likelihood of confusion was found on the basis of the similar marks and overlapping goods." Specifically, the examining attorney found that both marks include the word PRIORITY and that the Applicant offers supplements while the Registrant's kits include supplements. According to the examining attorney, "consumers are likely to believe mistakenly that the supplements and kits originate from the same source."

7. Based on the reasoning stated in the Examiner's April 20, 2018 office action and accepting that as true for the purposes of this proceeding, there exists a likelihood of confusion sufficient to create standing for Petitioner to cancel the registration.

8. Petitioner's mark enjoys priority to Registrant's mark and cancellation of the '633 Registration is therefore appropriate pursuant to 15 U.S.C. § 1064.

9. On information and belief, Registrant had knowledge of Petitioner's mark at the time it adopted, starting using and filed for registration of its mark.

10. Because the examining attorney for Petitioner's '077 Application has issued rejections based on '633 Registration, Petitioner has been, and will likely be continued to be damaged by the '633 Registration. *See* 15 U.S.C. § 1064; *see also* T.M.E.P. § 303.03.

**B. Abandonment**

11. Petitioner has attempted to contact the listed owner of the '633 Registration but all efforts to locate the owner and communicate with the owner have been unsuccessful. For example, Petitioner has tried to reach out to the Registrant by telephone and online, leaving messages. To-date, none of these attempts to contact the Registrant have been returned.

12. Petitioner has investigated the marketplace to determine whether the registered mark PRIORITY NUTRITION & Design has ever been used and if so, whether it continues to be used. Specifically, Petitioner has been unable to find evidence of current or past use of the mark PRIORITY NUTRITION & Design.

13. Based on Petitioner's failure to locate the Registrant and based on Petitioner's failure to locate evidence of use of the mark PRIORITY NUTRITION & Design by Registrant, Registrant appears to have abandoned any rights it might have had to the mark.

14. On information and belief, Registrant has abandoned the PRIORITY NUTRITION & Design mark.

15. Registrant is not entitled to the continued registration of the PRIORITY NUTRITION & Design mark due to abandonment.

WHEREFORE, Petitioner prays that this petition for cancellation be sustained in favor of Petitioner and that Registration No. 4,996,633 be cancelled.

Direct all communications to:

Mark P. Walters, Esq.  
LOWE GRAHAM JONES<sup>PLLC</sup>  
701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
Direct Dial: 206.957.2470  
Facsimile: 206.381.3301  
[Walters@LoweGrahamJones.com](mailto:Walters@LoweGrahamJones.com)

The required fee of \$400 (\$400 per class per registration) is submitted herewith.

RESPECTFULLY SUBMITTED June 25, 2018.

/Mark P. Walters/, PTO Reg. No. 46,050  
[Walters@LoweGrahamJones.com](mailto:Walters@LoweGrahamJones.com)  
Lowe Graham Jones PLLC  
701 Fifth Avenue, Suite 4800  
Seattle, WA 98104  
DD: 206.957.2470  
F: 206.381.3301

Attorneys for Petitioner