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Filing date: **07/13/2018**

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	Internal Balance, Inc.		
Entity	Corporation	Citizenship	Tennessee
Address	1608 Westgate Circle Suite 200 Brentwood, TN 37027 UNITED STATES		

Attorney information	Frank A. Mazzeo Ryder, Lu, Mazzeo & Konieczny LLC 808 Bethlehem Pike Suite 200 Colmar, PA 18915 UNITED STATES Email: fmazzeo@ryderlu.com Phone: 2159970248		
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Registration Subject to Cancellation

Registration No.	5447035	Registration date	04/17/2018
Registrant	Jones, Laura 1486 ROLLING ACRES DR ARGYLE, TX 762266330 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2017/07/25 First Use In Commerce: 2017/07/25 All goods and services in the class are subject to cancellation, namely: Dietary and nutritional supplements
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2696291	Application Date	08/03/2000
Registration Date	03/11/2003	Foreign Priority Date	NONE
Word Mark	INTERNAL BALANCE		

Design Mark	INTERNAL BALANCE
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2000/11/00 First Use In Commerce: 2000/11/00 retail store services and online retailstore services, all featuring vitamins,mineral supplements, dietary supplements, nutritional publications, athletic apparel and fitness equipment Class 042. First use: First Use: 2000/11/00 First Use In Commerce: 2000/11/00 nutritional and wellness consultation services for others

Attachments	76102906#TMSN.png(bytes) Cancellation-Petition.pdf(22712 bytes)
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Signature	/FrankAMazzeo/
Name	Frank A. Mazzeo
Date	07/13/2018

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

INTERNAL BALANCE, INC.,	:	
	:	
Petitioner,	:	
	:	
v.	:	In the Matter of Registration No. 5,447,035
	:	for the mark SMOOTH TRANSITION
	:	ADAPTIVE WELLNESS INTERNAL
LAURA JONES,	:	BALANCE & Design
	:	
Registrant.	:	

PETITION TO CANCEL

Petitioner Internal Balance, Inc. is a Tennessee corporation with an address of 1608 Westgate Circle, Suite 200, Brentwood, Tennessee 37027.

Upon information and belief, Registrant Laura Jones is an individual with an address of 1486 Rolling Acres Drive, Argyle, TX 76226.

Petitioner believes that it is being and will be damaged by the continued registration of the mark identified in U.S. Registration No. 5,447,035, SMOOTH TRANSITION ADAPTIVE WELLNESS INTERNAL BALANCE & Design (“Mark”) and hereby petitions the U.S. Trademark Trial and Appeal Board to cancel the same pursuant to 15 U.S.C. § 1064. As grounds for cancellation, Petitioner alleges the following:

1. This is a Petition to Cancel based upon a likelihood of confusion and/or actual confusion resulting from Registrant’s unauthorized registration and use of Petitioner’s INTERNAL BALANCE trademark as part of the Mark in connection with dietary and nutritional supplements. Petitioner seeks to cancel the registration for the Mark, U.S. Registration No. 5,447,035, because it has caused and/or is likely to cause consumer confusion and infringes Petitioner’s INTERNAL BALANCE trademark.

2. Petitioner owns the trademark INTERNAL BALANCE, U.S. Registration No. 2,696,291, in connection with retail store services and online retail store services, all featuring vitamins, mineral supplements, dietary supplements, nutritional publications, athletic apparel, and fitness equipment, and nutritional and wellness consultation services for others. Petitioner's INTERNAL BALANCE mark was registered on March 11, 2003.

3. Petitioner has continuously used the INTERNAL BALANCE mark in connection with the goods and services identified in U.S. Registration No. 5,447,035 since at least as early as November 2000, as indicated by the dates of first use and first use in interstate commerce in U.S. Registration No. 5,447,035.

4. On March 11, 2009, Petitioner filed a Combined Declaration of Use and Incontestability under Section 8 & 15, which was accepted on March 30, 2009, making Petitioner's INTERNAL BALANCE mark incontestable.

5. As a result of its long-term, continued, and valid use, and expenditures of time and money in advertising and promotion, of the INTERNAL BALANCE mark in connection with vitamins, supplements, and related goods and services, Petitioner has garnered and owns extensive goodwill in its INTERNAL BALANCE mark, and the mark has substantial financial value.

6. On August 17, 2017, Registrant filed U.S. Application Serial No. 87/573,761 for the Mark, SMOOTH TRANSITION ADAPTIVE WELLNESS INTERNAL BALANCE & Design, in connection with dietary and nutritional supplements. Registrant identified her first date of use and first date of use in interstate commerce for the Mark as July 25, 2017. On April 17, 2018, the Mark was registered to Registrant under U.S. Registration No. 5,447,035.

7. Petitioner's use, filing of the application to register, and registration of its INTERNAL BALANCE mark all pre-date Respondent's first use of, application to register, and registration of the Mark.

8. On March 28, 2018, Petitioner's counsel sent to Registrant a letter requesting that Registrant cease and desist all use of INTERNAL BALANCE as part of Registrant's mark, or similar marks, on the basis that the Mark has been and/or is likely to be confused with Petitioner's INTERNAL BALANCE mark, in which Petitioner has senior and prior rights over Registrant. Registrant did not respond to the letter.

9. Registrant's Mark is similar to Petitioner's INTERNAL BALANCE mark because it too contains the term INTERNAL BALANCE as part of the Mark. The remaining portion of Registrant's mark, SMOOTH TRANSITION ADAPTIVE WELLNESS, does not sufficiently obviate a likelihood of confusion because while INTERNAL BALANCE is only a part of the Mark, it is conspicuously set apart from the rest of the Mark and is featured in a different font style and in all capital letters, all of which has diverted and/or will divert consumer attention to this portion of the Mark.

10. The goods identified in Registrant's U.S. Registration No. 5,447,035 for the Mark, namely, dietary and nutritional supplements, are similar and related to the goods and services identified in Petitioner's U.S. Registration No. 2,696,291, namely, retail store services and online retail store services, all featuring vitamins, mineral supplements, dietary supplements, nutritional publications, athletic apparel, and fitness equipment, and nutritional and wellness consultation services for others.

11. Registrant's continued use of the Mark has and is likely to continue to confuse consumers into believing there is an association between Petitioner and Registrant due at least to the similarity in the respective marks and goods thereunder.

12. Registrant's Mark so resembles Petitioner's INTERNAL BALANCE mark, previously used in the United States, and not abandoned, as to have and/or be likely to cause confusion, or to cause mistake, or to deceive consumers as to source by suggesting that Registrant's goods are associated with, or approved, endorsed, affiliated with, authorized, or sponsored by Petitioner.

13. Registrant has already and/or will unjustly benefit from such believed association through increased profitability, misappropriation of Petitioner's goodwill, loss of sales by Petitioner from Registrant's unfair competition, and/or diminished value and ability of Petitioner's INTERNAL BALANCE mark to serve as a unique and distinctive source identifier of Petitioner's goods and services.

14. Unless cancelled by the Board, Respondent will continue unfairly to compete with Petitioner by continuing to use and maintain the registration of the Mark, wherefore Petitioner is without adequate remedy at law.

15. Respondent's use of INTERNAL BALANCE as part of the Mark is a knowing infringement of Petitioner's INTERNAL BALANCE mark.

WHEREFORE, Petitioner respectfully requests that U.S. Registration No. 5,447,035 be cancelled.

Respectfully submitted,

Date: July 13, 2018

Ryder, Lu, Mazzeo & Konieczny LLC

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