

ESTTA Tracking number: **ESTTA916086**

Filing date: **08/16/2018**

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	Daiwa Pharmaceutical Co., Ltd.		
Entity	Corporation	Citizenship	Japan
Address	1-16-19 Sangenjaya, Setagaya-ku Tokyo, 154-0024 JAPAN		

Attorney information	William J. Seiter Seiter Legal Studio 2500 Broadway, Bldg F, Suite F-125 Santa Monica, CA 90404 UNITED STATES williamjseiter@seiterlegalstudio.com 4242384333		
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Registration Subject to Cancellation

Registration No.	4473292	Registration date	01/28/2014
Registrant	Muscle Gauge Nutrition 10 Conchester Rd. Glen Mills, PA 19342 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2009/01/00 First Use In Commerce: 2009/01/00 All goods and services in the class are subject to cancellation, namely: Dietary and nutritional supplements; Dietary supplements; Nutritional supplements
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Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	Petition to Cancel 4473292.pdf(44627 bytes)
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Signature	/wjs/
Name	William J. Seiter
Date	08/16/2018

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

In the Matter of Trademark
Registration No.: 4473292
For the mark:



Date registered: January 28, 2014

Daiwa Pharmaceutical Co., Ltd.,
a Japanese corporation

Petitioner,

v.

Muscle Gauge Nutrition,
a Pennsylvania limited liability company

Registrant.

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) Cancellation No. _____
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PETITION TO CANCEL

Petitioner:

Daiwa Pharmaceutical Co., Ltd.
1-16-19 Sangenjaya, Setagaya-ku
Tokyo 154-0024
Japan

To the best of petitioner's knowledge, the name and address of the current owner of the registration is:

Muscle Gauge Nutrition
Conchester Rd.
Glen Mills, Pennsylvania 19342

Petitioner believes that it will be damaged by the registration, and hereby petitions to cancel the same as to all goods listed in the registration.

The grounds for the cancellation are as follows:

1. Petitioner is the owner of the trademark MGN-3, under U.S. Trademark Application Serial No. 87604294, filed on September 12, 2017, for “Nutraceuticals for use as a dietary supplement containing arabinoxylan extract derived from enzymatically modified rice bran to ameliorate immune system deficiency, excluding dietary supplements for muscle growth, sports nutrition, bodybuilding, weight training or athletic training,” in International Class 5.

2. On December 7, 2011, Registrant filed Application Serial No. 85489755 for the mark for the mark depicted below (“Registrant’s Mark”):



in International Class 5 for “Dietary and nutritional supplements; Dietary supplements; Nutritional supplements,” based on use in United States commerce under Section 1(a) of the Trademark Act, 15 U.S.C. Section 1051(a), claiming a date of first use in commerce and date of first in United States commerce of January 2009, and declaring that Registrant or its related company or licensee were using the mark in U.S. commerce for all of the applied for goods on December 7, 2011.

3. Thereafter, on January 28, 2014, Application Serial No. 85489755 registered based on Section 1(a) of the Trademark Act for “Dietary and nutritional supplements; Dietary supplements; Nutritional supplements,” under U.S. Trademark Registration No. 4473292.

4. Upon information and belief, Petitioner alleges that Registrant is currently not using the mark in U.S. Registration No. 4473292 in United States commerce on or in connection with the goods registered thereunder.

5. Upon information and belief, Petitioner alleges that Registrant has ceased use in U.S. commerce of the mark in U.S. Registration No. 4473292 on or in connection with the goods registered thereunder, without a bona fide intent to resume use.

6. Accordingly, Petitioner alleges upon information and belief that Registrant has abandoned use of the mark in Registration No. 4473292, such that the registration should be cancelled in accordance with Trademark Act Section 14(3), 15 U.S.C. §1064(3).

7. Petitioner will be irreparably harmed and financially damaged by the registration of Registrant's Mark, because Registrant's Mark has been cited in an Examining Attorney's Office Action, issued March 22, 2018, against Petitioner's pending Application Serial No. 87604294 as grounds for refusal of Petitioner's Application. Therefore, Registrant's Mark should be cancelled,

Request For Relief

For the foregoing reasons, Petitioner requests cancellation of Registration No. 4473292 as to all of the goods listed therein.

The Petition fee in the amount of \$400.00 for one class is filed electronically herewith.

Dated: August 15, 2018

Respectfully submitted,
SEITER LEGAL STUDIO

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