

ESTTA Tracking number: **ESTTA1005601**

Filing date: **09/30/2019**

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	GAGB LLC		
Entity	LLC	Citizenship	New Jersey
Address	3 Empire Blvd S. Hackensack, NJ 07606 UNITED STATES		

Attorney information	John P. Bostany The Bostany Law Firm PLLC 3 World Financial Center - 24th Floor New York, NY 10281 UNITED STATES john@bozlaw.com 2125304400
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Registration Subject to Cancellation

Registration No.	4884230	Registration date	01/12/2016
Registrant	Go 42 LLC 3219 E Camelback Rd Suite 567 Phoenix, AZ 85018 UNITED STATES Email: J.Cummings@go42llc.com		

Goods/Services Subject to Cancellation


Class 018. First Use: 2014/10/01 First Use In Commerce: 2014/10/01 All goods and services in the class are subject to cancellation, namely: All-purpose sports bags
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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)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	88256592	Application Date	01/10/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GOZONE		

Design Mark	
Description of Mark	The mark consists of "GOZONE" as a single word capitalized, with the "GO" portion outlined in black and the "ZONE" portion completed filled in.
Goods/Services	Class 025. First use: First Use: 1997/08/14 First Use In Commerce: 1997/08/14 Athletic jackets; Athletic pants; Athletic shirts; Athletic shorts; Clothing, namely, base layers; Foundation garments; Foundation garments worn around the mid-section or thighs to keep the stomach in and create a slimming effect; Gym shorts; Gym suits; Waist bands; Warm up outfits; Warm up suits; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Tops as clothing

Attachments	88256592#TMSN.png(bytes) Petition Cancel.pdf(64937 bytes)
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Signature	/JPB/
Name	John P. Bostany
Date	09/30/2019

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

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GAGB LLC,

Petitioner,

- against -

PETITION TO CANCEL

GO 42 LLC,

Respondent.

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Petitioner's Mark: GOZONE

Serial No.: 88256592

Class: 025

Petitioner GAGB LLC ("GOZONE"), through its undersigned counsel of record, hereby seeks cancellation of Respondent's Registration # 4884230 for GoZone Life and in support thereof respectfully alleges as follows:

1. Petitioner is the title owner of Application Serial # 88256592 in the United States Patent and Trademark Office ("USPTO") for the stylized mark GOZONE in International Class 025 for "Athletic jackets; Athletic pants; Athletic shirts; Athletic shorts; Clothing, namely, base layers; Foundation garments; Foundation garments worn around the midsection or thighs to keep the stomach in and create a slimming effect; Gym shorts; Gym suits; Waist bands; Warm up outfits; Warm up suits; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Tops as clothing" with first use in commerce as of August 14, 1997 (hereinafter "GOZONE Application").

2. Since January 12, 2016, Respondent has been the title owner of Registration # 4884230 for the mark "GoZone Life" in two Classes, one of which was Class 018 for "All-purpose sports bags" with first use in commerce as of October 01, 2014 (hereinafter "GoZone Life Registration").

3. The USPTO has refused registration of the GOZONE Application based upon likelihood of confusion with the GoZone Life Registration. Examiner determinations comparing marks and goods in GOZONE Application Office Action dated May 13, 2019 are incorporated herein by reference and as such there is a likelihood of confusion as to source between the GOZONE Application and the Class 18 portion of the GoZone Life Registration

4. Petitioner is being and will be damaged unless the subject Registration in Class 18 is canceled in accordance with 15 U.S.C. § 1064. The GoZone Life Registration has been registered for less than 5 years. Petitioner's use in commerce precedes Respondent's.

5. The USPTO does not consider first use in commerce in accepting or refusing applications i.e. prior Registrations will cause refusal of an application even if the applicant has first use in commerce. As such it is necessary to proceed with this Petition to Cancel in order that the dictates of our Constitution are fairly and justly accomplished.

6. Use in commerce is the lynchpin for a determination of priority. "The Supreme Court explained long ago that 'the right to a particular mark grows out of its use, not its mere adoption; its function is simply to designate the goods as the product of a particular trader and to protect his good will against the sale of another's product as his; and it is not the subject of property except in connection with an existing business'." *Buti v. Perosa, S.R.L.*, 139 F.3d 98, 103 (2d Cir. 1998) (quoting *United Drug Co. v. Theodore Rectanus Co.*, 248 U.S. 90, 97 (1918)).

7. "The right so acquired [from a Trademark Registration], however, exists only 'as a right appurtenant to an established business or trade in connection with which the mark is employed.'" *Id.* (quoting *United Drug*, 248 U.S. at 97). *See also LeSociete Anonyme des Parfums Le Galion v. Jean Patou, Inc.*, 495 F.2d 1265, 1271 (2d Cir. 1974) ("The user who first appropriates the mark obtains an enforceable right to exclude others from using it").

8. Under § 2(d) of the Lanham Act, registration of a mark must be refused if it “so resembles ... a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1052(d) (2006); *Estrada v. Telefonos De Mexico, S.A.B. de C.V.*, 447 Fed. Appx. 197, 201 (Fed. Cir. 2011).

9. Respondent’s mark in International Class 018 causes Dilution by blurring with respect to the Petitioner’s mark and is likely to cause confusion.

WHEREFORE, Petitioner respectfully requests that GO 42 LLC’s Registration for GoZone Life in Class 018 be cancelled under Trademark Act Sections 2(d) and 43(c).

Dated: September 30, 2019

By: s/John P. Bostany
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