

ESTTA Tracking number: **ESTTA1083247**

Filing date: **09/21/2020**

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	Youngevity International, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	2400 BOSWELL ROAD CHULA VISTA, CA 91914 UNITED STATES		

Correspondence information	BRADLEY P. HARTMAN HARTMAN TITUS PLC 3507 N. CENTRAL AVE. SUITE 101 PHOENIX, AZ 85012-2121 UNITED STATES Primary Email: trademarks@hartmantitus.com Secondary Email(s): bhartman@hartmantitus.com 6027170360		
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**Registration Subject to Cancellation**

Registration No.	5133219	Registration date	01/31/2017
Registrant	Pearls of Nature 338 W MILNE STREET PHILADELPHIA, PA 19144 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 003. First Use: 2011/10/01 First Use In Commerce: 2012/01/01 All goods and services in the class are subject to cancellation, namely: Bath gels; Bath salts; Beauty gels; Body oil; Essential oils; Exfoliant creams; Face and body creams; Lotions for skin, face, body; Non-medicated facial and eye serum containing antioxidants
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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)

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

U.S. Registration No.	6142049	Application Date	07/11/2019
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Registration Date	09/01/2020	Foreign Priority Date	NONE
Word Mark	NATURE'S PEARL		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 2005/03/22 First Use In Commerce: 2005/03/22  Dietary and nutritional supplements; Nutraceuticals for use as a dietary supplement; Liquid dietary supplements to boost energy; Nutritional supplement shakes; Protein supplement shakes; Protein supplement shakes for weight loss purposes; Preparations for the relief of pain</p> <p>Class 032. First use: First Use: 2010/07/10 First Use In Commerce: 2010/07/10  Non-alcoholic drinks, namely, energy shots enhanced with nutrients; Fruit juice; Grape juice beverages; Non-alcoholic drinks, namely, energy shots</p>		

U.S. Application No.	88510564	Application Date	07/11/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NATURE'S PEARL		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 2010/07/10 First Use In Commerce: 2010/07/10  Toothpaste; Hair shampoo; Hair Conditioner; Skin, body and facial lotion; Skin cleansing lotion; Skin, face and body cleansers; Foam cleansers for personal use; Lip balm</p>		

Attachments	2020-09-21 Petition for Cancellation - PEARLS OF NATURE.pdf(122765 bytes )
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Signature	/bradley p hartman/
Name	Bradley P. Hartman
Date	09/21/2020

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

In the matter of Trademark Registration No.: 5,133,219

Mark: PEARLS OF NATURE

Registration Date: January 31, 2017

**YOUNGEVITY INTERNATIONAL, INC.,**

**Petitioner,**

**v.**

**PEARLS OF NATURE/PEARL RHODES,**

**Respondent.**

**Cancellation No. \_\_\_\_\_**

**PETITION FOR CANCELLATION**

Youngevity International, Inc., a Delaware corporation having its principal place of business at 2400 Boswell Road, Chula Vista, California 91914 (“Petitioner”), is damaged by Registration No. 5,133,219 for the mark PEARLS OF NATURE (the “Registration”), and hereby petitions to cancel the same under the provisions of 15 U.S.C. § 1064.

As grounds for cancellation, Petitioner asserts that:

1. Petitioner is a large, publicly-traded, and successful health and nutrition products company that has, for over 20 years, manufactured and distributed a variety of products that support healthy living, including nutritional products, dietary

supplements, cosmetics, cleaning products, pet care products, nutritional beverages, clothing, jewelry, and many other items.

2. Petitioner offers approximately 5,500 health, wellness and lifestyle products that are distributed in the United States and internationally.

### **PETITIONER'S MARK**

3. Since at least as early as March 22, 2005, Petitioner, directly and through its predecessor in interest, has offered nutritional and dietary supplements under the trademark **NATURE'S PEARL** ("Petitioner's Mark").

4. Petitioner's predecessor-in-interest was the owner of U.S. Trademark Registration No. 3,223,112 for a stylized version of Petitioner's Mark, registered on March 27, 2007, from an application filed on July 21, 2006, based on use of the mark in interstate commerce since at least as early as March 22, 2005, for "Nutraceuticals for use as a dietary supplement" (the "Prior Registration").

5. The Prior Registration included a photograph of goods identified by Petitioner's Mark submitted on July 21, 2005, evidencing actual use of Petitioner's Mark on at least that date.

6. Since March 22, 2005, Petitioner has expanded its products offered under Petitioner's Mark to include a variety of personal hygiene products, skincare products, cosmetics, dietary supplements, protein shakes, energy shots, and other products.

7. On July 11, 2019, Petitioner filed with the U.S. Patent and Trademark Office (“USPTO”) Application Serial No. 88/510,564 (the “Application”) seeking registration of Petitioner’s Mark the following goods (“Petitioner’s Goods”):

- Toothpaste; Hair shampoo; Hair Conditioner; Skin, body and facial lotion; Skin cleansing lotion; Skin, face and body cleansers; Foam cleansers for personal use; Lip balm, in Class 3;
- Dietary and nutritional supplements; Nutraceuticals for use as a dietary supplement; Liquid dietary supplements to boost energy; Nutritional supplement shakes; Protein supplement shakes; Protein supplement shakes for weight loss purposes; Preparations for the relief of pain, in Class 5; and
- Energy shots enhanced with nutrients; Fruit juice; Grape juice beverages; Non-alcoholic drinks, namely, energy shots, in Class 32.

8. Petitioner has used Petitioner’s Mark for goods in Class 3 since at least as early as July 10, 2010.

9. Petitioner has used Petitioner’s Mark for goods in Class 5 since at least as early as March 22, 2005.

10. Petitioner has used Petitioner’s Mark for goods in Class 32 since at least as early as July 10, 2010.

11. On October 5, 2019, the USPTO refused registration of Petitioner's Mark for the Class 3 goods on the basis of an alleged likelihood of confusion with the Registered Mark.

12. On April 6, 2020, Petition filed a Request to Divide the Application into two applications, one for goods in Class 3 and the other for goods in Classes 5 and 32.

13. On September 1, 2020, Petitioner's Mark was registered (No. 6,142,049) for the following goods:

- Dietary and nutritional supplements; Nutraceuticals for use as a dietary supplement; Liquid dietary supplements to boost energy; Nutritional supplement shakes; Protein supplement shakes; Protein supplement shakes for weight loss purposes; Preparations for the relief of pain, in International Class 5; and
- Non-alcoholic drinks, namely, energy shots enhanced with nutrients; Fruit juice; Grape juice beverages; Non-alcoholic drinks, namely, energy shots, in International Class 32.

14. Petitioner's Mark and the original Application remains refused for goods in Class 3.

#### **RESPONDENT'S REGISTRATION**

15. According to the records of the USPTO, the current owner of the Registration is Pearls of Nature, a sole proprietorship composed of Pearl Rhodes, who

is located at 338 W. Milne Street, Philadelphia, Pennsylvania 19144 (“Respondent”).

16. The Registration was issued to Respondent on July 31, 2017, for the mark **PEARLS OF NATURE** (“Respondent’s Mark”) for use in connection with “Bath gels; Bath salts; Beauty gels; Body oil; Essential oils; Exfoliant creams; Face and body creams; Lotions for skin, face, body; Non-medicated facial and eye serum containing antioxidants” in Class 3 (“Respondent’s Goods”).

17. The Registration issued from Application Serial No. 87/082,050, which was filed on June 23, 2016, based on use anywhere since October 1, 2011, and use in interstate commerce since January 1, 2012.

18. Upon information and belief, Respondent did not use Respondent’s Mark anywhere prior to October 1, 2011.

19. Upon information and belief, Respondent did not use Respondent’s Mark in interstate commerce prior to January 1, 2012.

20. Petitioner has not given Respondent permission or approval to use or register Respondent’s Mark.

21. NATURE’S PEARL and PEARLS OF NATURE are confusingly similar.

22. Companies that offer dietary and nutritional products under a given trademark often also offer skincare, cosmetics and other personal care products under the same mark.

23. The goods of the parties need not be identical or even competitive to find a likelihood of confusion if the goods can be related in the mind of the consuming public as to the origin of the goods.

24. The same entity commonly manufactures/produces/provides Respondent's Goods and Petitioner's Goods and markets the goods under the same mark, sells the goods through the same trade channels, and the goods are used by the same class of consumers in the same fields of use.

25. Petitioner has used and promoted Petitioner's Mark continuously and extensively and has made substantial sales of goods under Petitioner's Mark. As a result of the long continuous use and promotion of Petitioner's Goods under Petitioner's Mark, Petitioner's Mark has developed valuable goodwill, and Petitioner has developed strong common law rights in Petitioner's Mark.

26. Petitioner's Mark used for goods in Class 3 is senior to Respondent's Mark used for goods in Class 3.

27. There is no dispute about priority. Petitioner has used Petitioner's Mark in commerce continuously since at least March 22, 2005, and has not abandoned the mark. Petitioner has used Petitioner's Mark for goods in Class 3 since at least as early as July 10, 2010, and has not abandoned the mark. On the other hand, Respondent filed trademark application on June 23, 2016, and claims a first use anywhere date of October 1, 2011 and a first use in interstate commerce date of January 1, 2012.



28. Respondent's Mark is confusingly and deceptively similar to Petitioner's Mark.

29. Respondent's Goods, as identified in the Registration, overlap with some, and are closely related to all, of Petitioner's Goods.

30. On information and belief, the parties' goods are promoted in the same channels of trade to the same or similar consumers or types of consumers.

31. Due to the high similarity between Respondent's Mark and Petitioner's Mark, the overlapping or closely related nature of the parties' goods, and the overlap in the parties' channels of trade and types of consumers, consumers are likely to believe that the goods offered under Respondent's Mark originate from Petitioner, or are otherwise endorsed, sponsored, or approved by Petitioner.

32. The continued registration of Respondent's Mark is damaging and will continue to damage Petitioner because of this likelihood of consumer confusion.

33. Due to the USPTO's refusal to register Petitioner's Mark for all of Petitioner's Goods, Petitioner is and will continue to be damaged by the Registration.

34. In view of Petitioner's priority, the Board should sustain this petition and cancel Registration No. 5,133,219 pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and Section 14(1) of the Lanham Act, 15 U.S.C. § 1064(1).

**RESPONDENT HAS ABANDONED THE REGISTERED MARK**

35. On information and belief after reasonable inquiry, Respondent has stopped using and abandoned the Registered Mark for all the goods identified in the Registration with intent not to resume use.

36. On August 21, 2020, Petitioner wrote to Respondent regarding Petitioner's allegation of trademark abandonment. Respondent did not respond to the letter or provide Petitioner with any information alleging or supporting continuing use or an intent to resume use of the Registered Mark.

37. Faced with an allegation on information and belief that the Registered Mark has been abandon without intent to resume use, and having failed to rebut the allegation or provide evidence supporting use of the Registered Mark, Petitioner contends that the Registered Mark is no longer in use for any of the goods identified in the subject registration and the Registration should be canceled.

38. Respondent has abandoned the Registered Mark for all the goods identified in the Registration.

39. In view of Respondent's non-use and abandonment of the Registered Mark, Respondent is not entitled to continue registration of the mark pursuant to Section 14(3) of the Trademark Act, 15 U.S.C. § 1064(3), and, as such, Respondent's registration of the Registered Mark should be cancelled.

40. Petitioner's attempts to register the Petitioner's Mark is being impaired by the continued registration of the abandoned Registered Mark. As such, U.S. Registration No. 5,133,219 should be canceled.

41. Petitioner reserves the right to amend this Petition to allege other claims in the event discovery of other information indicates amendment is appropriate.

WHEREFORE, Petitioner requests that this Petition for Cancellation be sustained and that Registration No. 5,133,219 be canceled.

DATED this 21<sup>st</sup> day of September, 2020.

**HARTMAN TITUS PLC**

By: s/ Bradley P. Hartman

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