

ESTTA Tracking number: **ESTTA1092151**

Filing date: **10/29/2020**

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

Proceeding	92075277
Party	Defendant Pearls of Nature
Correspondence Address	PEARLS OF NATURE 338 W MILNE STREET PHILADELPHIA, PA 19144 UNITED STATES Primary Email: david@pearlsofnature.com 215-840-6357
Submission	Answer
Filer's Name	Pearl C Rhodes
Filer's email	pearl@pearlsofnature.com, david@pearlsofnature.com
Signature	/Pearl C Rhodes/
Date	10/29/2020
Attachments	Response to TTAB 92075277.pdf(206365 bytes )

To Whom it May Concern:

My name is Pearl Rhodes, Owner of **Pearls of Nature**, and holder of **Trademark Registration No. 5,133,219**. My husband and I are small business owners. We cannot afford to contest this Petition for Cancellation “Law firm to Law firm”, so hopefully, my explanation in clear, concise layman’s terms will lay to rest any confusion as to motives and purpose of our Trademark Registration, Pearls of Nature.

My Business idea was conceived around 2009 / 2010. My goal was to develop a line of non-inflammatory skin care and externally applied wellness products. This desire stemmed from my own personal experiences and observations during 20 years of working in the Health Insurance and Pharmaceutical industries.

We have responded to the Key allegations of impropriety in the **RESPONDENTS REGISTRATION** (pars. 15 -34), and **RESPONDENT HAS ABANDONED THE REGISTERED MARK** (pars. 35 – 40) sections by inserting our refutations into the document by means of Endnotes.

We followed all the legal steps required to obtain this Registration. I feel obligated to bring to the Board's attention, the fact that when we decided to pursue Registration, there was a pending application at USPTO for the identical Mark, same Class of products. I believe the entity filing was somewhere in Arizona. That's all I remember about them. Their application sat in limbo and was eventually abandoned. It was only after waiting patiently for the legal process to play itself out that we successfully pursued this Trademark.

While not written in expert legalese, we hope that the explanations provided will help the USPTO Appeals Board recognize our Business as legitimate, and that our Registered Trademark is an essential part of our Business.

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





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.

**-See Endnotes**

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.

**-See Endnotes**

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.

**-See Endnotes**

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. **-See Endnotes**

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.

**-See Endnotes**

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

**-See Endnotes**

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**

**-See Endnotes**

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

Bradley P. Hartman

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*Attorneys for Youngevity International, Inc.*

**Note**

#1

**RE Points 21 & 23:** We vehemently disagree that NATURE'S PEARL and PEARLS OF NATURE are "confusingly similar". The English language, Webster, and Oxford point this out. The Petitioners Mark, on its face, is a *singular* term. Ours is *plural*. We believe that any educated consumer whose research has bought them to either of our product lines, will easily comprehend the difference in brand names. We have faith in the intelligence of our consumers' basic reading ability.

**Note**

#2

**RE Points 24 & 31:** While we do seek the same class of consumers, established history disagrees with the concept / possibility of confusion within manufacturing and trade channels. To date, EVERY product we have ever sold was manufactured in-house. When we procured raw materials from manufacturers, no confusion in Business names ever occurred. Our largest customer was Whole Foods Markets. At one time we had products in 22 stores along the Interstate 95 corridor, from Fairfax, VA to Princeton, NJ. Their buyers **NEVER** expressed confusion.

**Note**

#3

**RE Point 25:** We, the Registrant, have used this Mark continuously and extensively, and have made substantial sales of goods under our registered Mark. As a result of our long, continuous use and promotion of our goods, we too have developed valuable goodwill associated with our registered Mark. We believe that the Common Law argument for the value of our Mark, plain English that it is, is just as strong, if not stronger.

**Note**

#4

**RE Point 28:** Please see **Note #1**. However, the Petitioner's use of the word "deceptively" implies malicious motive and takes this to a different level. Please provide proof of a "deceptive" motive in the formulation of our Business name and Trademark, which just happens to be, MY name. It was conceived after many ours of brainstorming, trying to figure out a way to associate our name(s) with our products. To be frankly honest, we had never heard of the Petitioners brand prior to receiving this Cancellation Request.

**Note**

#5

**RE Points 31 & 32:** Please provide proof of how our Mark has "damaged" the Petitioner's business. As mentioned previously, we had never heard of NATURE'S PEARL prior to receiving this Cancellation Request. Logically, by the Petitioners own reasoning, PEARL'S OF NATURE can make the same "damage" claim. However, if we have been "damaged" by the Petitioner's existing line of products, we are unaware. The loyal following that we built never expressed confusion, or even mentioned the Petitioners products to us. We have confidence in the intellectual abilities of our consumers, specifically their ability to read, comprehend, and make an informed decision (**See NOTE #2**).

**Note**

#6

**Regarding the allegation that the RESPONDENT HAS ABANDONED THE REGISTERED MARK (pars. 35-40):** Nothing is further from the truth. In May of 2017, we put our Wholesale and Retail business on "Hiatus". My husband and I moved from the registration address in Philadelphia, PA to rural Texas to do Missionary work for a predetermined period of time. During this period, we maintained all of our Business named channels: Internet Domain, Website hosting, shipping accounts with UPS, FEDEX, USPS, etc. We actively continued to do research and investigate product ingredients (via UL Prospector and other channels) with the goal of relaunching our Business once this short detour was over. That being the case, we continued to list any of the expenses related to such on our tax return.

In July 2020 we relocated from rural Texas to the Phoenix, AZ Metro area. We have studied the area and it is ripe for our business and products. We have a regular customer from Philadelphia who had moved to the area. She had promoted us to others long before we arrived in the area. She has been asking us regularly when we will resume business. We are now in the process of gearing up for a relaunch, starting with retail through our website, then we will pursue wholesale opportunities. We have several new products in the Development stage that we intend to launch very soon.