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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	Peloton Interactive, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	125 WEST 25TH STREET, 11TH FLOOR NEW YORK, NY 10001 UNITED STATES		
Attorney information	DAVID DONAHUE FROSS ZELNICK LEHRMAN & ZISSU, P.C. 151 WEST 42ND STREET, 17TH FLOOR NEW YORK, NY 10036 UNITED STATES Primary Email: ddonahue@fzlj.com Secondary Email(s): lkittay@fzlj.com, skipen@fzlj.com, ttabfiling@fzlj.com 212-813-5900		
Docket Number	PELI 2003350		

Registration Subject to Cancellation

Registration No.	5385686	Registration date	01/23/2018
Registrant	Peloton Cold Brew, LLC 309 E. MARSHALL STREET WEST CHESTER, PA 19380 UNITED STATES		

Goods/Services Subject to Cancellation

Class 030. First Use: 2015/03/09 First Use In Commerce: 2015/06/02 All goods and services in the class are subject to cancellation, namely: Beverages made of coffee

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.	4580888	Application Date	11/09/2012
Registration Date	08/05/2014	Foreign Priority Date	NONE

Word Mark	PELTON
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 2014/04/25 First Use In Commerce: 2014/04/25 Computers and downloadable software for monitoring and analyzing various parameters associated with the operation of a bicycle or exercise cycle and for fitness training; ear phones; digital media, namely, downloadable audio and audiovisual recordings, all in the field of exercise, fitness, wellness and personal development; downloadable software in the nature of an application for use by individuals participating in exercise classes, physical training, and exercise instruction for detecting, storing and reporting daily human energy expenditure and physical activity level, for developing and monitoring personal activity and exercise plans, training goals and giving feedback on the achieved results</p> <p>Class 028. First use: First Use: 2014/01/22 First Use In Commerce: 2014/01/22 Stationary exercise bicycles and component parts thereof, namely, bicycle seat and bicycle pedals; exercise weights; stationary bicycles equipped with interactive computer systems, video players [, and body bars]</p> <p>Class 038. First use: First Use: 2014/05/13 First Use In Commerce: 2014/05/13 Streaming of audio and video materials on the Internet featuring physical fitness classes, training, and instruction</p> <p>Class 041. First use: First Use: 2014/05/01 First Use In Commerce: 2014/05/01 Providing classes, workshops and seminars in the fields of fitness and exercise; providing fitness and exercise facilities; physical fitness instruction and consultation; physical fitness conditioning classes; physical fitness training services providing a website featuring information on exercise and physical fitness accessible through a global computer network and mobile devices</p>

U.S. Registration No.	5200495	Application Date	04/03/2015
Registration Date	05/09/2017	Foreign Priority Date	NONE
Word Mark	PELTON		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 014. First use: First Use: 2016/12/00 First Use In Commerce: 2016/12/00 Silicone wristbands in the nature of a bracelet</p> <p>Class 018. First use: First Use: 2014/04/22 First Use In Commerce: 2014/04/22 All purpose sport bags</p> <p>Class 025. First use: First Use: 2014/04/22 First Use In Commerce: 2014/04/22 Sports apparel, namely, shirts, leggings, sleeveless tops, t-shirts, tank tops, sports bras, pullovers; headwear, namely, beanies; Sports apparel, namely, shorts, exercise tights, tops, jackets; bandanas, shoes, hats</p>		

U.S. Registration No.	5202624	Application Date	09/02/2015
Registration Date	05/16/2017	Foreign Priority Date	NONE
Word Mark	PELTON		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 035. First use: First Use: 2013/08/06 First Use In Commerce: 2013/08/06 Retail store services in the fields of sports apparel, fitness equipment, and fitness classes; On-line retail store services in the fields of fields of sports apparel, fitness equipment, and fitness classes

U.S. Registration No.	5997798	Application Date	06/18/2018
Registration Date	02/25/2020	Foreign Priority Date	NONE
Word Mark	PELTON		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2018/10/00 First Use In Commerce: 2018/10/00 Heart rate monitors Class 021. First use: First Use: 2019/12/00 First Use In Commerce: 2019/12/00 Water bottles sold empty		

U.S. Registration No.	5810555	Application Date	06/18/2018
Registration Date	07/23/2019	Foreign Priority Date	NONE
Word Mark	PELTON		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 2015/05/00 First Use In Commerce: 2015/05/00 Jewelry Class 016. First use: First Use: 2017/03/00 First Use In Commerce: 2017/03/00 Decals Class 045. First use: First Use: 2012/08/00 First Use In Commerce: 2012/08/00 Online social networking services		

Attachments	Petition to Cancel PELTON.pdf(121723 bytes)
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Signature	/David Donahue/
Name	David Donahue
Date	10/07/2020

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

PELOTON INTERACTIVE, INC.,

Petitioner,

-against-

PELOTON COLD BREW, LLC,

Registrant.

Cancellation No. _____

PETITION FOR CANCELLATION

Petitioner, Peloton Interactive, Inc. (“Peloton” or “Petitioner”) believes that it will be damaged by the continued registration of Registration No. 5385686 for the trademark PELOTON and hereby petitions to cancel the same. As grounds for the petition for cancellation, Petitioner, by its attorneys Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

FACTS

A. Petitioner and Its PELOTON Mark

1. Petitioner is a Delaware corporation with an address of 125 West 25th Street, 11th Floor, New York, NY 10001.

2. Petitioner offers and sells innovative fitness equipment, streaming instructional content and an interactive community experience under the PELOTON mark (the “PELOTON Mark”) to bring studio-style workouts to its members at home. Petitioner has enjoyed remarkable success. With more than seventy showrooms across the country, approximately 3.1 million members as of June 30, 2020, the majority of whom are in the United States, and many millions

of dollars in annual sales, Petitioner and its PELOTON Mark have captured the attention of the fitness industry and achieved widespread renown.

3. Petitioner has extensively used and promoted its PELOTON Mark in connection with a variety of goods and services, including fitness equipment and classes, clothing, water bottles and other fitness-related goods and services.

4. Petitioner also offers an innovative downloadable software application (the PELOTON App) for use on mobile devices, including without limitation smartphones, which allows users to stream thousands of PELOTON fitness classes, obtain information about PELOTON instructors, find other PELOTON members, and purchase PELOTON products. The PELOTON app has been downloaded more than 1 million times by users and has earned impressive ratings from users.

5. For several years at Petitioner's well-known flagship studio in New York, Petitioner has provided café services under its PELOTON Mark, featuring a wide variety of food and beverage products including but not limited to coffee, tea, snack bars, smoothies, and juices. Peloton's flagship studio and associated café attract visitors from across the United States and various other countries throughout the world.

6. Peloton also has offered commentary on fitness, food, nutrition, and wellness, among other topics, under its PELOTON Mark on its popular blog and social media accounts.

7. Through its extensive promotion and use, and the success of Petitioner's offerings, Petitioner developed strong common law trademark rights and enormous goodwill in the PELOTON Mark in connection with all the above-referenced goods and services long before any date upon which Registrant can rely.

8. Petitioner owns numerous U.S. trademark registrations for the PELOTON Mark for a wide variety of goods and services including but not limited to the following:

- **U.S. Reg. No. 4580888** for “Computers and downloadable software for monitoring and analyzing various parameters associated with the operation of a bicycle or exercise cycle and for fitness training; ear phones; digital media, namely, downloadable audio and audiovisual recordings, all in the field of exercise, fitness, wellness and personal development; downloadable software in the nature of an application for use by individuals participating in exercise classes, physical training, and exercise instruction for detecting, storing and reporting daily human energy expenditure and physical activity level, for developing and monitoring personal activity and exercise plans, training goals and giving feedback on the achieved results” in International Class 9; “Stationary exercise bicycles and component parts thereof, namely, bicycle seats and bicycle pedals; exercise weights; stationary bicycles equipped with interactive computer systems, video players, and body bars” in International Class 28; “Streaming of audio and video materials on the Internet featuring physical fitness classes, training, and instruction” in International Class 38; and “Providing classes, workshops and seminars in the fields of fitness and exercise; providing fitness and exercise facilities; physical fitness instruction and consultation; physical fitness conditioning classes; physical fitness training services providing a website featuring information on exercise and physical fitness accessible through a global computer network and mobile devices” in International Class 41;
- **U.S. Reg. No. 5200495** for “Silicone wristbands in the nature of a bracelet” in International Class 14; “All purpose sport bags” in International Class 18; and “Sports apparel, namely, shirts, leggings, sleeveless tops, t-shirts, tank tops, sports bras, pullovers; headwear, namely, beanies; Sports apparel, namely, shorts, exercise tights, tops, jackets; bandanas, shoes, hats” in International Class 25;
- **U.S. Reg. No. 5202624** for “Retail store services in the fields of sports apparel, fitness equipment, and fitness classes; On-line retail store services in the fields of fields of sports apparel, fitness equipment, and fitness classes” in International Class 35;
- **U.S. Reg. No. 5997798** for “Heart rate monitors” in International Class 10 and “Water bottles sold empty” in International Class 21;
- **U.S. Reg. No. 5810555** for “Jewelry” in International Class 14; “Decals” in International Class 16; and “Online social networking services” in International Class 41;

9. All of the registrations for the PELOTON Mark relied upon herein are valid, subsisting and in full effect and serve as prima facie evidence of the validity of the mark and of

Petitioner's exclusive right to use the mark in connection with the goods and services identified therein, pursuant to Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(a). Additionally, U.S. Reg. No. 4580888 has become incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065, and therefore serves as conclusive proof of Petitioner's exclusive right to use the mark in connection with the services identified therein, as provided by Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(b).

B. Registrant and its PELOTON Registration

10. Upon information and belief based on the online records of the USPTO, Registrant is a Pennsylvania limited liability company with an address of 309 E. Marshall Street, West Chester, Pennsylvania 19380.

11. On June 28, 2017, Registrant filed Application Serial No. 87509321 ("Registrant's Application") for the mark PELOTON ("Registrant's Mark") for "Beverages made of coffee" in International Class 30 based on alleged use in commerce under Section 1(a) of the Lanham Act, 15 U.S.C. §1051(a). Registrant's Application claimed first use as of March 9, 2015 and first use in commerce as of June 2, 2015.

12. On January 23, 2018, Registrant's Application matured to U.S. Registration No. 5385686 (the "Registration").

13. Upon information and belief, at the time that Registrant filed its trademark application to register Registrant's Mark, Registrant had actual knowledge of Petitioner's prior and exclusive rights in its PELOTON Mark. At the very least, Registrant was on constructive notice of Petitioner's prior and exclusive rights in its PELOTON Mark by virtue of Petitioner's federal trademark registrations therefor, pursuant to Section 22 of the Lanham Act, 15 U.S.C. § 1072.

14. Registrant is not connected to Petitioner in any way and was not authorized by Petitioner to register or use Registrant's Mark.

15. The continued registration of Registrant's Mark is inconsistent with Petitioner's prior rights in its PELOTON Mark, is inconsistent with the statutory grant of exclusivity flowing from Petitioner's numerous trademark registrations for the PELOTON Mark, and will substantially damage Petitioner's investment and goodwill in its PELOTON Mark.

16. Petitioner has standing to bring this Petition for Cancellation and to assert the claims set forth herein.

FIRST GROUND FOR RELIEF
PRIORITY AND LIKELIHOOD OF CONFUSION

17. Petitioner incorporates by reference paragraphs 1 through 16 above as if fully set forth herein.

18. Upon information and belief, Petitioner's rights in the PELOTON Mark in the United States predate any date on which Registrant can rely for Registrant's Mark.

19. Registrant's Mark is identical to Petitioner's PELOTON Mark.

20. The goods identified in the Registration are closely related to the goods and services offered by Petitioner under Petitioner's Mark.

21. As a consequence of the similarity of the parties' marks and the relatedness of the parties' respective goods and services, along with other relevant factors, consumers are likely to be deceived into falsely believing that the goods offered by Registrant under Registrant's Mark originate from or are otherwise associated with or endorsed by Petitioner, or that there is some relationship between Registrant and Petitioner or the goods of Registrant and the goods and services of Petitioner, all to Petitioner's injury and harm

22. Thus, registration of Registrant's Mark in connection with the goods set forth in the Registrant is likely to cause confusion, cause mistake, or to deceive the public into the false belief that the goods offered by Registrant under Registrant's Mark come from or are otherwise sponsored by or connected with Petitioner, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

23. By reason of the foregoing, Petitioner will be damaged by the continued registration of Registrant's Mark.

SECOND GROUND FOR RELIEF
ABANDONMENT

24. Petitioner repeats the allegations contained in paragraphs 1 through 16 above as if fully set forth herein.

25. Upon information and belief, and upon Petitioner's investigation of Registrant and its business, Registrant is not using, has no plans to use, and has otherwise discontinued all use of Registrant's Mark in the United States on or in connection with the goods identified in the Registration. Upon further information and belief, and based on Petitioner's investigation of Registrant and its business, Registrant has no intent to resume such use in the foreseeable future.

26. Therefore, Registrant has abandoned Registrant's Mark for the goods identified in the Registration under Section 14(3) of the Lanham Act and the Registration should be canceled pursuant to 15 U.S.C. § 1064(3).

27. By reason of the foregoing, Petitioner will be injured by the continued registration to Registrant of Registrant's Mark.

THEREFORE, it is respectfully requested that this Petition be sustained and that Registration No. 5385686 be canceled in its entirety. Petitioner authorizes the Board to withdraw

from Petitioner's USPTO debit account no. 230825 any additional fees as may be required for this Petition.

Dated: New York, New York
October 7, 2020

Fross Zelnick Lehrman & Zissu, P.C.

By: /David Donahue/

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