

ESTTA Tracking number: **ESTTA1231414**

Filing date: **08/25/2022**

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	Claya Inc		
Entity	Corporation	Citizenship	Delaware
Address	4322 LEALAND LANE NASHVILLE, TN 37204 UNITED STATES		

Attorney information	DANIEL P. MULLARKEY POL SINELLI PC 1401 I STREET, NW, SUITE 800 WASHINGTON, DC 20005 UNITED STATES Primary email: uspt@polsinelli.com Secondary email(s): dmullarkey@polsinelli.com, hmaynard@polsinelli.com, jolsen@polsinelli.com 202-626-8305		
Docket no.	107162735293		

Registration subject to cancellation

Registration no.	5855318	Registration date	09/10/2019
Register	Principal		
Registrant	Rebecca Friedman PO BOX 3844 BEVERLY HILLS, CA 90212 UNITED STATES		

Goods/services subject to cancellation

<p>Class 044. First Use: Jul 9, 2016 First Use In Commerce: May 1, 2017 All goods and services in the class are subject to cancellation, namely: Health care services, namely, wellness programs; Wellness and health-related consulting services; Conducting telephone and in-person personal lifestyle wellness assessments; Consulting in the field of health and wellness to bring about personal happiness; Providing a website featuring information about health, wellness and nutrition; Providing a website featuring information and advice in the fields of diet, weight loss, diet planning and lifestyle wellness; Providing in-person holistic health care services; Providing information in the field of alternative health and healing; Providing information in the fields of health and wellness</p>

Grounds for cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	Petition to Cancel DAILY ROUTINES Design.pdf(157632 bytes) EXHIBIT A.pdf(55547 bytes) EXHIBIT B.pdf(129987 bytes)
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Signature	/daniel mullarkey/
Name	Daniel P. Mullarkey
Date	08/25/2022

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

In the Matter of Registration No. 5,855,318
Mark: DAILY ROOTINES & Design

CLAYA INC)	
)	
)	
Petitioner,)	
)	
v.)	Cancellation No. _____
)	
Rebecca Friedman DBA Daily Rootines)	
)	
)	
Registrant.)	

PETITION FOR CANCELLATION

Claya Inc., a Delaware Limited Liability Company (hereinafter “Claya” or “Petitioner”) believes it is damaged by the continued registration of the mark DAILY ROOTINES & Design (“DAILY ROOTINES Mark”), as claimed in Registration No. 5,855,318 (“DAILY ROOTINES Registration”) and owned by Rebecca Friedman DBA Daily Rootines (“Registrant”).

As grounds for this petition it is alleged that:

1. Claya is a leading health and wellness company specializing in optimizing cellular nutrition through data science and personalized health solutions. Since as early as 2018, Claya has been in the business of providing precision multivitamins tailored to its customers’ needs and health objectives and nutrition advisory services throughout the United States in connection with the mark ROOTINE (“Claya Mark”).

2. On December 3, 2020, Claya filed U.S. Application No. 90/357,631 for the Claya Mark (the “Claya Application”) covering the following goods and services: “personalized multivitamin and micronutrients nutritional supplements, namely, supplements tailored to

biometric data, health data, DNA, blood levels, and lifestyle” in International Class 5 and “advisory of plans relating to nutrition, namely, advising on vitamin and supplement dosage based on biometric data and tracking cellular health” in International Class 44 (the “Claya Goods and Services”). The Claya Application claims a first use date of at least as early as April 1, 2018, and a first use in commerce date of at least as early as September 16, 2018.


3. The mark claimed in the Claya Application is currently in use and has been continuously in use since at least as early as the foregoing first-use date and a constructive first-use date as of the application filing date. A copy of the TSDR status page for the Claya Application is attached as Exhibit A.

4. Claya has expended substantial monies in marketing, advertising, and promoting its Claya Mark and, through such sales and advertising, has generated substantial goodwill and customer recognition in the Claya Mark. Claya has derived substantial revenues from the Claya Goods and Services under the Claya Mark.

5. The Claya Mark is distinctive of the Claya Goods and Services. Valuable goodwill has accumulated in the Claya Mark inuring solely to Claya.

6. The United States Patent and Trademark Office has cited the DAILY ROOTINES Registration as a prior registration likely to cause confusion with the mark of the Claya Application.

7. Details of Registrant’s DAILY ROOTINES Registration are set forth as follows:

Reg. No.	Mark	App. Date	Reg. Date	Goods/Services
5,855,318		October 29, 2018	September 10, 2019	IC 44: Health care services, namely, wellness programs; Wellness and health-related consulting services; Conducting telephone and in-person personal lifestyle wellness assessments;

Reg. No.	Mark	App. Date	Reg. Date	Goods/Services
				Consulting in the field of health and wellness to bring about personal happiness; Providing a website featuring information about health, wellness and nutrition; Providing a website featuring information and advice in the fields of diet, weight loss, diet planning and lifestyle wellness; Providing in-person holistic health care services; Providing information in the field of alternative health and healing; Providing information in the fields of health and wellness.

Copies of the TSDR status page for Registrant’s DAILY ROOTINES Registration and copies of the registration certificate are attached as Exhibit B.

8. The DAILY ROOTINES Registration claims a first use date of July 9, 2016 and first use in commerce date of May 1, 2017. *See* Exhibit B.

9. The United States Patent and Trademark Office (“USPTO”) cited the DAILY ROOTINES Registration as a prior registration against the Claya Application.

10. Upon information and belief, Registrant is not currently using the DAILY ROOTINES Mark in U.S. commerce in connection with the sale of the identified services.

11. Claya has not found any evidence that Registrant is currently using the DAILY ROOTINES Mark in U.S. commerce in connection with any goods or services.

12. Upon information and belief, Registrant no longer sells products or services using the DAILY ROOTINES Mark and has abandoned use of the mark without an intent to resume use.

13. Upon information and belief, Registrant has not offered services using the DAILY ROOTINES Mark for more than three years.

14. The DAILY ROOTINES Registration should be canceled pursuant to 15 U.S.C. § 1064 for non-use and abandonment.

15. In view of Registrant's non-use of the DAILY ROOTINES Mark, and/or Registrant's abandonment of the DAILY ROOTINES Mark, Registrant is not entitled to maintain registration of the DAILY ROOTINES Registration.

16. Claya's petition to cancel Registrant's DAILY ROOTINES Registration is timely and Registrant's DAILY ROOTINES Registration is not incontestable.

17. By reason of the foregoing, Claya will be damaged by the continued registration of Registrant's DAILY ROOTINES Mark.

WHEREFORE, Claya prays that this Petition for Cancellation be granted and that Registrant's DAILY ROOTINES Registration be canceled.

Dated: August 25, 2022

Respectfully submitted,

/Daniel P. Mullarkey /
Daniel P. Mullarkey
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Attorneys for Petitioner,
Claya Inc.

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that the foregoing Petition for Cancellation was electronically filed using the ESTTA system on August 25, 2022.

/ Hillary E. Maynard /
Hillary E. Maynard
Polsinelli PC
Attorneys for Petitioner

EXHIBIT A

Generated on: This page was generated by TSDR on 2022-08-25 10:13:17 EDT

Mark: ROUTINE

Routine

US Serial Number: 90357631

Application Filing Date: Dec. 03, 2020

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.

Status: A final Office action refusing registration has been sent (issued) because the applicant neither satisfied nor overcame all requirements and/or refusals previously raised. The applicant may respond by filing (1) a request for reconsideration; and/or (2) an appeal to the Trademark Trial and Appeal Board. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Apr. 18, 2022

Mark Information

Mark Literal Elements: ROUTINE

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: personalized multivitamin and micronutrients nutritional supplements, namely, supplements tailored to biometric data, health data, DNA, blood levels, and lifestyle

International Class(es): 005 - Primary Class

U.S Class(es): 005, 006, 018, 044, 046, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Apr. 01, 2018

Use in Commerce: Sep. 16, 2018

For: Advisory of Plans Relating to Nutrition, namely, advising on vitamin and supplement dosage based on biometric data and tracking cellular health

International Class(es): 044 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Apr. 01, 2018

Use in Commerce: Sep. 16, 2018

Basis Information (Case Level)

Filed Use: Yes
Filed ITU: No
Filed 44D: No
Filed 44E: No
Filed 66A: No
Filed No Basis: No

Currently Use: Yes
Currently ITU: No
Currently 44E: No
Currently 66A: No
Currently No Basis: No

Current Owner(s) Information

Owner Name: Claya Inc
Owner Address: 4322 Lealand lane
Nashville, TENNESSEE UNITED STATES 37204
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Daniel P. Mullarkey
Attorney Primary Email Address: uspt@polsinelli.com
Docket Number: 107162691579
Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Daniel P. Mullarkey
Polsinelli PC
1401 I Street, NW, Suite 800
Washington, DISTRICT OF COLUMBIA UNITED STATES 20005
Phone: 202-626-8305
Fax: 202-783-3535
Correspondent e-mail: uspt@polsinelli.com dmullarkey@polsinelli.com sen@polsinelli.com
Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Apr. 18, 2022	NOTIFICATION OF FINAL REFUSAL EMAILED	
Apr. 18, 2022	FINAL REFUSAL E-MAILED	
Apr. 18, 2022	FINAL REFUSAL WRITTEN	83172
Sep. 04, 2021	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Sep. 04, 2021	LETTER OF SUSPENSION E-MAILED	6332
Sep. 04, 2021	SUSPENSION LETTER WRITTEN	83172
Aug. 02, 2021	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jul. 30, 2021	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jul. 30, 2021	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
May 20, 2021	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
May 20, 2021	NON-FINAL ACTION E-MAILED	6325
May 20, 2021	NON-FINAL ACTION WRITTEN	83172
May 20, 2021	ASSIGNED TO EXAMINER	83172
Feb. 09, 2021	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Dec. 07, 2020	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: LEE, YAT SYE I
Law Office Assigned: LAW OFFICE 107

File Location

Current Location: TMEG LAW OFFICE 107 - EXAMINING ATTORNEY ASSIGNED
Date in Location: Apr. 18, 2022

EXHIBIT B

United States of America

United States Patent and Trademark Office



Reg. No. 5,855,318

Registered Sep. 10, 2019

Int. Cl.: 44

Service Mark

Principal Register

Rebecca Friedman (UNITED STATES INDIVIDUAL), DBA Daily Rootines
Po Box 3844
Beverly Hills, CALIFORNIA 90212

CLASS 44: Health care services, namely, wellness programs; Wellness and health-related consulting services; Conducting telephone and in-person personal lifestyle wellness assessments; Consulting in the field of health and wellness to bring about personal happiness; Providing a website featuring information about health, wellness and nutrition; Providing a website featuring information and advice in the fields of diet, weight loss, diet planning and lifestyle wellness; Providing in-person holistic health care services; Providing information in the field of alternative health and healing; Providing information in the fields of health and wellness

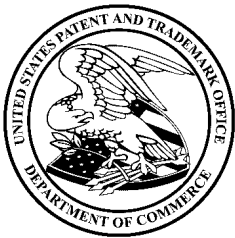
FIRST USE 7-9-2016; IN COMMERCE 5-1-2017

The color(s) black, purple, and green is/are claimed as a feature of the mark.

The mark consists of the black word "DAILY" on the top left, above and off to the left of the black word "ROOTINES". The first two letters "RO" in the word "ROOTINES" are bolded. The second "O" is depicted as a root vegetable or a turnip. The center of the vegetable is the letter "O", with the main vegetable filled in with the color purple. The black root hangs below the word "ROOTINES" while its green leaves with black veins are above "ROOTINES" and at the end/next to the word "DAILY". The letter "T" in "ROOTINES" is bolded. The last 4 last letters in "ROOTINES" which are "INES" are in a smaller font compared to the word "ROOT". It is the same size, color, and font as the word "DAILY".

No claim is made to the exclusive right to use the following apart from the mark as shown:
"DAILY"

SER. NO. 88-173,641, FILED 10-29-2018



Andrei Iancu

Director of the United States
Patent and Trademark Office

Generated on: This page was generated by TSDR on 2022-08-25 10:14:55 EDT

Mark: DAILY ROOTINES



US Serial Number: 88173641

Application Filing Date: Oct. 29, 2018

US Registration Number: 5855318

Registration Date: Sep. 10, 2019

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Service Mark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Sep. 10, 2019

Publication Date: Jun. 25, 2019

Mark Information

Mark Literal Elements: DAILY ROOTINES

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the black word "DAILY" on the top left, above and off to the left of the black word "ROOTINES". The first two letters "RO" in the word "ROOTINES" are bolded. The second "O" is depicted as a root vegetable or a turnip. The center of the vegetable is the letter "O", with the main vegetable filled in with the color purple. The black root hangs below the word "ROOTINES" while its green leaves with black veins are above "ROOTINES" and at the end/next to the word "DAILY". The letter "T" in "ROOTINES" is bolded. The last 4 last letters in "ROOTINES" which are "INES" are in a smaller font compared to the word "ROOT". It is the same size, color, and font as the word "DAILY".

Color Drawing: Yes

Color(s) Claimed: The color(s) black, purple, and green is/are claimed as a feature of the mark.

Disclaimer: "DAILY"

Design Search Code(s): 05.11.25 - Turnips; Other vegetables; Celery; Broccoli; Asparagus; Artichokes
27.03.04 - Plants forming letters or numerals

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Health care services, namely, wellness programs; Wellness and health-related consulting services; Conducting telephone and in-person personal lifestyle wellness assessments; Consulting in the field of health and wellness to bring about personal happiness; Providing a website featuring information about health, wellness and nutrition; Providing a website featuring information and advice in the fields of diet, weight loss, diet planning and lifestyle wellness; Providing in-person holistic health care services; Providing information in the field of alternative health and healing; Providing information in the fields of health and wellness

International Class(es): 044 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 09, 2016

Use in Commerce: May 01, 2017

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Rebecca Friedman

DBA, AKA, Formerly: DBA Daily Rootines

Owner Address: PO Box 3844
Beverly Hills, CALIFORNIA UNITED STATES 90212

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: REBECCA FRIEDMAN

PO BOX 3844
BEVERLY HILLS, CALIFORNIA UNITED STATES 90212

Phone: 310-487-4448

Correspondent e-mail: dailyrootines@gmail.com rebecca@dailyrootines.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 10, 2019	REGISTERED-PRINCIPAL REGISTER	
Jun. 25, 2019	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jun. 25, 2019	PUBLISHED FOR OPPOSITION	
Jun. 05, 2019	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
May 21, 2019	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 21, 2019	TEAS/EMAIL CORRESPONDENCE ENTERED	68123
May 21, 2019	CORRESPONDENCE RECEIVED IN LAW OFFICE	68123
May 15, 2019	ASSIGNED TO LIE	68123
May 08, 2019	ASSIGNED TO LIE	70138
May 03, 2019	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Feb. 04, 2019	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Feb. 04, 2019	NON-FINAL ACTION E-MAILED	6325
Feb. 04, 2019	NON-FINAL ACTION WRITTEN	69965
Feb. 04, 2019	ASSIGNED TO EXAMINER	69965
Nov. 14, 2018	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Nov. 13, 2018	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Nov. 01, 2018	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Sep. 10, 2019