

ESTTA Tracking number: **ESTTA1247535**

Filing date: **11/11/2022**

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	Maple Mountain Group, Inc.		
Entity	Corporation	Citizenship	Utah
Address	588 SOUTH 2000 WEST SPRINGVILLE, UT 84663 UNITED STATES		

Attorney information	LAURA M. KONKEL MICHAEL BEST & FRIEDRICH, LLP 790 N WATER STREET SUITE 2500 MILWAUKEE, WI 53202 UNITED STATES Primary email: mkeipdocket@michaelbest.com Secondary email(s): lmkonkel@michaelbest.com, llamansky@michaelbest.com No phone number provided		
Docket no.	014469-0009		

**Registration subject to cancellation**

Registration no.	2982725	Registration date	08/09/2005
Register	Principal		
Registrant	IHERB, LLC 17400 LAGUNA CANYON RD., SUITE 400 IRVINE, CA 92618 UNITED STATES		

**Goods/services subject to cancellation**

Class 005. First Use: Jan 1, 1977 First Use In Commerce: Jan 1, 1977 All goods and services in the class are subject to cancellation, namely: NUTRITIONAL SUPPLEMENT
---

**Grounds for cancellation**

Abandonment	Trademark Act Section 14(3)
-------------	-----------------------------

Attachments	Petition to Cancel - 33884239.1.pdf(136631 bytes )
-------------	--

Signature	/Laura Lamansky/
Name	Laura Lamansky
Date	11/11/2022



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

Maple Mountain Group, Inc.,

Petitioner,

v.

IHERB, LLC,

Respondent.

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

Registration No.: 2982725

Mark: OPTI-PACK

Registered: Aug. 09, 2005

**PETITION TO CANCEL**

Maple Mountain Group, Inc. (“Petitioner”), a Utah corporation with an address at 588 South 2000 West, Springville, Utah 84663, believes that it is and will continue to be damaged by Registration No. 2982725 and hereby petitions to cancel it. The grounds for cancellation are as follows:

1. Upon information and belief, IHERB, LLC (“Respondent”) is a Delaware limited liability company with an address at 17400 Laguna Canyon Rd., Suite 400, Irvine, California 92618.

2. Respondent owns U.S. Registration No. 2982725 (“Respondent’s Registration”) for OPTI-PACK (“Respondent’s Mark”) for a “nutritional supplement” in Class 5 (“Respondent’s Goods”).

3. Petitioner filed U.S. Application No. 97028578 for AXIS OPTIPACK for “Nutritional supplements and preparations; healthcare supplements and preparations; dietary supplements and preparations; meal replacement bars; dietary drink mixes for use as a meal replacement, sports enhancement, performance enhancement, weight management, weight loss and weight gain; food supplements; dietary food supplements; vitamins, minerals and antioxidants; supplements for detoxification, stress relief, anti-aging and strengthening immune systems” in Class 5 and U.S.

Application No. 97028573 for OPTIPACK for “Skin care products and preparations; soaps, skin and facial lotions and creams; cosmetics, skin toners; hair care preparations and products; nail care preparations and products; dental products; toothpaste and mouthwash; deodorant; shave gels; and laundry detergent” in Class 3. Petitioner’s Application Nos. 97028578 and 97028573 are collectively

referred to as "Petitioner's Applications." TSDR records for Petitioner's Applications are attached at Exhibit A.

4. Petitioner's Applications were refused based on a likelihood of confusion with Respondent's Registration.

5. Upon information and belief, Respondent abandoned any use of Respondent's Mark in connection with Respondent's Goods with no intent to resume use.

6. Upon information and belief, Respondent abandoned any use of Respondent's Mark in connection with Respondent's Goods at least three (3) years prior to the date hereof.

7. Upon information and belief, Respondent abandoned any alleged rights in Respondent's Mark within the meaning of 15 U.S.C. § 1127.

8. Petitioner is damaged and will continue to be damaged by the existence of Respondent's Registration because unless cancelled, it will remain as a cloud on Petitioner's legal right to use and register Petitioner's Marks.

WHEREFORE, Petitioner requests that Respondent's Registration be cancelled.

Respectfully submitted,

**MAPLE MOUNTAIN GROUP, INC.**

By its Attorneys,

Date: November 11, 2022

/Laura M. Konkel/  
Laura M. Konkel  
Laura Lamansky  
**MICHAEL BEST & FRIEDRICH LLP**  
790 N. Water Street, Suite 2500  
Milwaukee, WI 53202  
Phone: (414) 271-6560  
Fax: (414) 277-0656

**EXHIBIT A**

Generated on: This page was generated by TSDR on 2022-11-11 14:34:12 EST

Mark: AXIS OPTIPACK

AXIS OPTIPACK

US Serial Number: 97028578

Application Filing Date: Sep. 15, 2021

Register: Principal

Mark Type: Trademark

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 non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Jun. 08, 2022

## Mark Information

Mark Literal Elements: AXIS OPTIPACK

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:** Nutritional supplements and preparations; healthcare supplements and preparations; dietary supplements and preparations; meal replacement bars; dietary drink mixes for use as a meal replacement, sports enhancement, performance enhancement, weight management, weight loss and weight gain; food supplements; dietary food supplements; vitamins, minerals and antioxidants; supplements for detoxification, stress relief, anti-aging and strengthening immune systems

International Class(es): 005 - Primary Class

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

Class Status: ACTIVE

Basis: 1(b)

## Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: Yes

Currently ITU: Yes

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:** Maple Mountain Group, Inc.  
**Owner Address:** 588 South 2000 West  
Springville, UTAH UNITED STATES 84663  
**Legal Entity Type:** CORPORATION

**State or Country** UTAH  
**Where Organized:**

## Attorney/Correspondence Information

### Attorney of Record

**Attorney Name:** Laura M. Konkel  
**Attorney Primary Email Address:** [mkejpdocket@michaelbest.com](mailto:mkejpdocket@michaelbest.com)  
**Docket Number:** 014469-9606  
**Attorney Email Authorized:** Yes

### Correspondent

**Correspondent Name/Address:** LAURA M. KONKEL  
MICHAEL BEST & FRIEDRICH LLP  
790 N. WATER STREET, SUITE 2500  
MILWAUKEE, WISCONSIN UNITED STATES 53202  
**Phone:** 414-271-6560  
**Fax:** 414-277-0656  
**Correspondent e-mail:** [mkejpdocket@michaelbest.com](mailto:mkejpdocket@michaelbest.com) [lmkonkel@michaelbest.com](mailto:lmkonkel@michaelbest.com)  
**Correspondent e-mail Authorized:** Yes

### Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Jun. 08, 2022	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 08, 2022	NON-FINAL ACTION E-MAILED	6325
Jun. 08, 2022	NON-FINAL ACTION WRITTEN	77782
Jun. 07, 2022	ASSIGNED TO EXAMINER	77782
Oct. 21, 2021	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 18, 2021	NEW APPLICATION ENTERED IN TRAM	

## TM Staff and Location Information

### TM Staff Information

**TM Attorney:** YONTEF, DAVID ERIC  
**Law Office Assigned:** LAW OFFICE 118

### File Location

**Current Location:** TMO LAW OFFICE 118- EXAMINING ATTORNEY ASSIGNED  
**Date in Location:** Jun. 08, 2022

Generated on: This page was generated by TSDR on 2022-11-11 14:34:51 EST

Mark: OPTIPACK

# OPTIPACK

US Serial Number: 97028573

Application Filing Date: Sep. 15, 2021

Register: Principal

Mark Type: Trademark

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 non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Jun. 08, 2022

## Mark Information

Mark Literal Elements: OPTIPACK

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:** Skin care products and preparations; soaps, skin and facial lotions and creams; cosmetics, skin toners; hair care preparations and products; nail care preparations and products; dental products; toothpaste and mouthwash; deodorant; shave gels; and laundry detergent

International Class(es): 003 - Primary Class

U.S Class(es): 001, 004, 006, 050, 051, 052

Class Status: ACTIVE

Basis: 1(b)

## Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: Yes

Currently ITU: Yes

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:** Maple Mountain Group, Inc.

**Owner Address:** 588 South 2000 West  
Springville, UTAH UNITED STATES 84663

**Legal Entity Type:** CORPORATION

**State or Country** UTAH  
**Where Organized:**

---

## Attorney/Correspondence Information

---

### Attorney of Record

**Attorney Name:** Laura M. Konkel

**Docket Number:** 014469-9601

**Attorney Primary** [mkeipdocket@michaelbest.com](mailto:mkeipdocket@michaelbest.com)  
**Email Address:**

**Attorney Email** Yes  
**Authorized:**

### Correspondent

**Correspondent** LAURA M. KONKEL  
**Name/Address:** MICHAEL BEST & FRIEDRICH LLP  
790 N. WATER STREET, SUITE 2500  
MILWAUKEE, WISCONSIN UNITED STATES 53202

**Phone:** 414-271-6560

**Fax:** 414-277-0656

**Correspondent e-** [mkeipdocket@michaelbest.com](mailto:mkeipdocket@michaelbest.com) [lmkonkel@michaelbest.com](mailto:lmkonkel@michaelbest.com)  
**mail:** [michaelbest.com](http://michaelbest.com)

**Correspondent e-** Yes  
**mail Authorized:**

### Domestic Representative - Not Found

---

## Prosecution History

---

Date	Description	Proceeding Number
Jun. 08, 2022	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 08, 2022	NON-FINAL ACTION E-MAILED	6325
Jun. 08, 2022	NON-FINAL ACTION WRITTEN	77782
Jun. 07, 2022	ASSIGNED TO EXAMINER	77782
Oct. 21, 2021	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 18, 2021	NEW APPLICATION ENTERED IN TRAM	

---

## TM Staff and Location Information

---

### TM Staff Information

**TM Attorney:** YONTEF, DAVID ERIC

**Law Office** LAW OFFICE 118  
**Assigned:**

### File Location

**Current Location:** TMO LAW OFFICE 118- EXAMINING  
ATTORNEY ASSIGNED

**Date in Location:** Jun. 08, 2022