

ESTTA Tracking number: **ESTTA1306170**

Filing date: **08/25/2023**

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 | Peak Performance Nutrients, Inc. | | |
| Entity | Corporation | Citizenship | Florida |
| Address | 1505 POINSETTIA DRIVE DELRAY BEACH, FL 33444 UNITED STATES | | |

| | | | |
|----------------------|--|--|--|
| Attorney information | SIMOR L. MOSKOWITZ WESTERMAN HATTORI, LLP 8500 LEESBURG PIKE SUITE 7500 TYSONS, VA 22182 UNITED STATES Primary email: smoskowitz@whda.com Secondary email(s): tjeffery@whda.com, trademarkmail@whda.com 703-827-3800 | | |
| Docket no. | OT230005US00 | | |

Registration subject to cancellation

| | | | |
|------------------|--|-------------------|------------|
| Registration no. | 5551732 | Registration date | 08/28/2018 |
| Register | Principal | | |
| Registrant | Peak Performance Life LLC 3773 HOWARD HUGHES PKWY, SUITE 500S LAS VEGAS, NV 89169 UNITED STATES | | |

Goods/services subject to cancellation

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| Class 005. First Use: Nov 15, 2017 First Use In Commerce: Nov 15, 2017 All goods and services in the class are subject to cancellation, namely: Protein supplements; Powdered nutritional supplement drink mix containing organic green superfoods; Whey protein supplements |
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Grounds for cancellation

| | |
|--------------------------------------|---------------------------------------|
| Priority and likelihood of confusion | Trademark Act Sections 14(1) and 2(d) |
|--------------------------------------|---------------------------------------|

Marks cited by petitioner as basis for cancellation


| | | | |
|------------------------------------|------|------------------|------|
| U.S. application/ registration no. | NONE | Application date | NONE |
|------------------------------------|------|------------------|------|

| | |
|-------------------|--|
| Register | NONE |
| Registration date | NONE |
| Mark | PEAK PERFORMANCE NUTRIENTS |
| Goods/services | Â#equine performance nutritional supplementsÂ# and Â#online retail store services featuring equine performance nutritional supplementsÂ# |

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|------------------------------------|------|------------------|------|
| U.S. application/ registration no. | NONE | Application date | NONE |
|------------------------------------|------|------------------|------|

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|----------|------|
| Register | NONE |
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|-------------------|------|
| Registration date | NONE |
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| Mark |  |
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|----------------|--|
| Goods/services | Â#equine performance nutritional supplementsÂ# and Â#online retail store services featuring equine performance nutritional supplementsÂ# |
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|-------------|--|
| Attachments | Peak Performance Life Petition to Cancel.pdf(121781 bytes) Peak Performance Nutrients Logo final.jpg |
|-------------|--|

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| Signature | /Simor L. Moskowitz/ |
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| Name | Simor L. Moskowitz |
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|------|------------|
| Date | 08/25/2023 |
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|----------------------------------|---|---|
| PEAK PERFORMANCE NUTRIENTS, INC. |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Cancellation No. |
| |) | Reg. No. 5551732 |
| |) | |
| PEAK PERFORMANCE LIFE, LLC |) | Mark:  |
| Respondent. |) | |

PETITION TO CANCEL

Petitioner, Peak Performance Nutrients, Inc., a corporation duly organized and existing under the laws of the state of Florida, located and doing business at 1505 Poinsettia Drive, Delray Beach, FL 33444, believes that it is or will be damaged by Registration No. 5551732 issued August 28, 2018, to Registrant on the Principal Register

for the trademark  in connection with “*Protein supplements; Powdered nutritional supplement drink mix containing organic green superfoods; Whey protein supplements*” in Class 5. Petitioner hereby petitions to cancel said registration.

1. Petitioner, Peak Performance Nutrients, Inc. (hereinafter “PPN” or “Petitioner”), is a corporation duly organized and existing under the laws of the state of Florida, having its address and place of business at 1505 Poinsettia Drive, Delray Beach, FL 33444.

2. On information and belief, Registrant Peak Performance Life LLC is a limited liability company organized and existing under the laws of the State of Nevada, whose address is 3773 Howard Hughes Pkwy., Suite 500S, Las Vegas, NV 89169.

3. Petitioner has adopted, used and is currently using the trademark PEAK

PERFORMANCE NUTRIENTS and



(collectively "Petitioner's

PPN Marks") in connection with "equine performance nutritional supplements" and "online retail store services featuring equine performance nutritional supplements".

4. On August 28, 2018, Respondent was issued federal Registration No.

5551732 on the Principal Register for the trademark



in connection with

"Protein supplements; Powdered nutritional supplement drink mix containing organic green superfoods; Whey protein supplements" in Class 5 (collectively referred to hereinafter as "Respondent's Goods"), claiming November 15, 2017, as the date of first use of the mark.


5. Commencing long prior to the November 17, 2017, date of first use alleged in the registration sought to be cancelled herein, Petitioner continuously has, and is now, engaged in the sale and distribution of "equine performance nutritional supplements" and rendering "online retail store services featuring equine performance nutritional supplements" (collectively, "Petitioner's Goods and Services") in commerce under and in connection with Petitioner's PEAK PERFORMANCE NUTRIENTS and




marks.


6. Since its initial use of Petitioner's PPN Marks, Petitioner has advertised, offered, and sold/rendered Petitioner's Goods and Services bearing and/or under Petitioner's PPN Marks to the public in commerce through various channels of trade, with the result that Petitioner's customers, the trade, and/or the public in general have come to know and recognize Petitioner's PPN Marks and associate the marks with Petitioner and/or the goods and services advertised, offered, sold, distributed and/or rendered by Petitioner.

7. On information and belief, Petitioner's rights in Petitioner's PPN Marks are

prior and superior to any rights of Respondent in the  mark which is the subject of Reg. No. 5551732.

8. To the extent that there exists a likelihood of confusion between Petitioner's


PEAK PERFORMANCE NUTRIENTS and/or  marks and the

 mark of Registration No. 5551732, Petitioner enjoys priority in its mark(s) *vis a vis* Respondent in its mark.

9. At a minimum, use of the respective marks by Petitioner and Registrant has resulted in actual confusion due to a number of Petitioner's products bearing Petitioner's PPN marks being mistakenly and erroneously associated with Registrant on the Amazon website, www.amazon.com, by Amazon Brand Registry and/or customers and potential customers causing damage to Petitioner.

10. By virtue of the foregoing, and based upon Petitioner's priority, if Respondent is allowed to retain such rights as are conferred under the Principal Register of the Trademark Act of 1946, Respondent will enjoy an advantage and gain to which it is not entitled under the Act, to the detriment and harm of Petitioner, and Petitioner will be subject to great and irreparable damage.

WHEREFORE, Petitioner Peak Performance Nutrients, Inc. believes and alleges that it is being and will continue to be damaged by registration of Respondent's

 mark as aforesaid, and prays that the Trademark Trial and Appeal Board issue a judgment:

- A. sustaining the Petition to Cancel; and rendering judgment in favor of Petitioner;
- B. ordering that Registration No. 5551732 be cancelled forthwith; and

C. for such other and further relief as is deemed just and appropriate.

* * *

Petitioner will submit payment of the requisite fee for filing this Petition to Cancel in one (1) class with the online filing of this Petition pursuant to 37 CFR 2.6 (a)(17). Please charge any deficiency or additional amount needed to perfect this filing to the undersigned Attorney's Deposit Account, No. 502866.

Respectfully submitted,
PEAK PERFORMANCE NUTRIENTS, INC.

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Dated: August 25, 2023
Atty. Dkt. OT230005US00