

ESTTA Tracking number: **ESTTA1385678**
Filing date: **09/25/2024**

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	Elitedigital LLC		
Entity	Limited Liability Company	Incorporated or registered in	Alabama
Address	3070 SOMERSET TRCE BIRMINGHAM, AL 35242 UNITED STATES		
Attorney information	ALAN L. CHOW LAW OFFICE OF ALAN L. CHOW 128 BURRILL STREET, UNIT C SWAMPSCOTT, MA 01907 UNITED STATES Primary email: alan@alciplaw.com 781-307-8193		
Docket no.			

Registration subject to cancellation

Registration no.	7333609	Registration date	03/19/2024
Register	Supplemental		
Registrant	NUTROTONIC 450 HIGHWAY 1 WEST, #277 IOWA CITY, IA 52246 UNITED STATES		

Goods/services subject to cancellation

Class 005. First Use: Dec 28, 2021 First Use In Commerce: Dec 28, 2021 All goods and services in the class are subject to cancellation, namely: Mineral dietary supplements
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Grounds for cancellation

The mark is or has become generic	Trademark Act Section 23(a)
Other	Primarily geographically descriptive

Attachments	TTAB Cancellation Pt 1.pdf(4832968 bytes) TTAB Cancellation Pt 2.pdf(5083776 bytes)
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Signature	/Alan L Chow/
Name	Alan L Chow

Date	09/25/2024
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1068, requiring Respondent to disclaim " Himalayan shilajit" in the Registration. As grounds for cancellation, Petitioner alleges as follows:

1. Petitioner is and has been in the business of selling various health and beauty products made out of shilajit, an organic-mineral product that is preferably harvested from the mountains of Himalayas, since February of 2024. In connection with this business, Petitioner offers for sale and sells its products online at www.xarashilajit.com.

2. Since at least as early as February 2024, Petitioner has used the primarily geographic and generic designation "Himalayan shilajit" to identify that its healthy and beauty products made of the organic-mineral product shilajit, which is primarily harvested from the mountains of Himalayas

3. Petitioner needs to be able to use this designation in connection with the promotion and sale of its health and beauty products made out of shilajit, as it is a common generic designation to identify these goods. Attached as Exhibit A are true and correct copies of product pictures showing Petitioner's generic usage of the designation.

4. Petitioner has never sought to register " Himalayan shilajit" as a trademark and has not claimed or sought exclusive rights in the designation in connection with any goods or services.

5. Petitioner filed Application Serial No. 98/752,942 to register the mark XARA SHILAJIT and Application Serial No. 98/752,951 for PURE HIMALAYAN SHILAJIT GUMMIES. Attached as Exhibit B is a true and correct copy of the USPTO records for Petitioner's applications.

6. The generic designation "Himalayan shilajit" has been used not only by Petitioner, but also by retailers to identify the same health and beauty products. Attached as Exhibit C are true and correct webpages showing generic use of "Himalayan shilajit" by others in the industry.

7. The generic designation "Himalayan shilajit" has also been used by members of the public to identify a key characteristic of. For example, attached as Exhibit D are true and correct copies of webpages showing generic use of "Himalayan shilajit" by the general public.

8. Nutrotonic ("**Respondent**") is a limited liability company with an address of 450 Highway 1 West, #277, Iowa City, IA 52246.

9. On January 21, 2023, Respondent filed Application Serial No. 97763200 to register "AUTHENTIC HIMALAYAN SHILAJIT" as a trademark with the United States Patent and Trademark Office in connection with mineral dietary supplements, without disclaiming any portion of the alleged mark.

10. The USPTO initially rejected Respondent's Application Serial No. 97763200 on the grounds that " AUTHENTIC HIMALAYAN SHILAJIT" is a descriptive designation meaning and requiring disclaimer of SHILAJIT. However, the USPTO was amenable to grant registration of AUTHENTIC HIMALAYAN SHILAJIT on the Supplemental Register. The requirement to only disclaim SHILAJIT is incorrect, as the term HIMALAYAN, is also geographically descriptive and should have been disclaimed as well.

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