

ESTTA Tracking number: **ESTTA260090**

Filing date: **01/12/2009**

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 requests to cancel indicated registration.

Petitioner Information

Name	Abbott Laboratories		
Entity	Corporation	Citizenship	Illinois
Address	100 Abbott Park Road, D377/AP6A Abbott Park, IL 60064 UNITED STATES		

Attorney information	Raymond I. Geraldson, Jr. Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP 311 South Wacker Drive, Suite 5000 Chicago, IL 60606 UNITED STATES rig@pattishall.com, ksk@pattishall.com Phone:312.554.8000		
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Registration Subject to Cancellation

Registration No	2805684	Registration date	01/13/2004
Registrant	Arnold, Michael 4521 Campus Drive, No. 225 Irvine, CA 92715 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2003/09/03 First Use In Commerce: 2003/09/03 All goods and services in the class are cancelled, namely: Dietary and Nutritional Supplements
Class 030. First Use: 2003/09/03 First Use In Commerce: 2003/09/03 All goods and services in the class are cancelled, namely: Grain-based nutrition, health and snack bars

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	965204	Application Date	06/09/1972
Registration Date	07/31/1973	Foreign Priority Date	NONE
Word Mark	ENSURE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class U046 (International Class 005). First use: First Use: 1972/03/17 First Use In Commerce: 1972/03/17 LIQUID NUTRITIVE PREPARATIONS FOR ORAL OR GAVAGE FEEDING

U.S. Registration No.	1475612	Application Date	06/22/1987
Registration Date	02/09/1988	Foreign Priority Date	NONE
Word Mark	PEDIASURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1987/01/30 First Use In Commerce: 1987/01/30 PEDIATRIC NUTRITIVE PREPARATION		

U.S. Registration No.	1485012	Application Date	09/02/1987
Registration Date	04/19/1988	Foreign Priority Date	NONE
Word Mark	ENSURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1986/10/29 First Use In Commerce: 1986/10/29 DIETARY FOOD SUPPLEMENTS; NAMELY, VITAMINS AND MINERALS IN A FLAVORED PUDDING BASE		

U.S. Registration No.	2269656	Application Date	08/22/1997
Registration Date	08/10/1999	Foreign Priority Date	NONE
Word Mark	NEOSURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1999/01/00 First Use In Commerce: 1999/01/00 infant formula		

Attachments	SUGASURE.PDF (15 pages)(457318 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/KristenSKnecht/
Name	Kristen S. Knecht

Date	01/12/2009
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In The Matter of Registration No. 2,805,684
For the Trademark SUGASURE, in International Classes 005 and 030
Registered on January 13, 2004

ABBOTT LABORATORIES,)	
)	
Petitioner,)	
v.)	Cancellation No.
)	
MICHAEL ARNOLD,)	
)	
Registrant.)	

PETITION TO CANCEL

Abbott Laboratories ("Petitioner"), an Illinois corporation, having its principal place of business at 100 Abbott Park Road D377/AP6A, Abbott Park, Illinois 60064, believes it is and will continue to be damaged by registration of the trademark shown in Registration No. 2,805,684, and hereby petitions to cancel the same.

In support thereof, Petitioner states:

1. Petitioner has for many years been engaged in the manufacture, distribution, advertising, and sale of a wide variety of nutritional products and supplements, including products sold under the trademarks ENSURE, PEDIASURE, and NEOSURE (collectively, "SURE Marks").
2. Consumers have come to recognize products advertised and sold under the SURE Marks by the common –SURE portion of their name, and as being related and coming from a common source, Petitioner.
3. Since long prior to the priority filing date of the registration petitioned to be cancelled herein, Petitioner has continually used its SURE family of trademarks in interstate

commerce in connection with the advertising, promotion, and sale of nutritional products and supplements.

4. Petitioner owns numerous valid and subsisting United States trademark registrations and applications for its SURE Marks, including, but not limited to:

Trademark	Registration No.	Registration Date	Goods
ENSURE	965,204	07/31/1973	"Liquid nutritive preparations for oral or gavage feeding", in Int'l Class 5.
PEDIASURE	1,475,612	02/09/1988	"Pediatric nutritive preparation", in Int'l Class 5.
ENSURE	1,485,012	04/19/1988	"Dietary food supplements; namely, vitamins and minerals in a flavored pudding base", in Int'l Class 5.
NEOSURE	2,269,656	08/10/1999	"Infant formula", in Int'l Class 5.

Attached hereto as Exhibit A are print-outs from the United States Patent and Trademark Office online database showing the current status of these registrations and copies of the Certificates of Registration therefor.

5. All of the above registrations are valid, subsisting and owned by Petitioner. Moreover, all of the above registrations have become incontestable under 15 U.S.C. § 1065 and the certificates of registration thereof constitute "conclusive evidence" of "the validity of the registered mark[s], of the registrant's ownership of the mark[s], and of the registrant's exclusive right to use of the mark[s] in connection with the goods or services specified in the registration." 15 U.S.C. § 1115.

6. Petitioner has sold many millions of dollars worth of goods under its SURE Marks throughout the United States, and has spent millions of dollars advertising and promoting its SURE Marks throughout the United States.

7. By virtue of its extensive sales, advertising, and promotion, Petitioner's SURE Marks have become extremely well-known throughout the United States, and Petitioner now owns an immensely valuable goodwill symbolized by its SURE Marks.

8. By virtue of Petitioner's long use and extensive sales throughout the United States and the success of Petitioner's advertising and promotional efforts, Petitioner's SURE Marks are distinctive and famous. The SURE Marks achieved that distinctiveness and fame prior to the priority filing date of the registration petitioned to be cancelled herein.

9. On October 30, 2000, Registrant applied to register the trademark SUGASURE for "dietary and nutritional supplements", in International Class 5, and "grain-based nutrition, health and snack bars", in International Class 30, the registration of which Petitioner petitions to cancel herein. The registration for SUGASURE issued on January 13, 2004.

10. Upon information and belief, neither Registrant nor any predecessor or related company of Registrant has any basis for claiming rights in SUGASURE in connection with the identified goods before the priority filing date of the registration petitioned to be cancelled herein.

11. Registrant's use and registration of SUGASURE is without Petitioner's consent.

12. Registrant's use of SUGASURE is likely to cause confusion, mistake or deception with Petitioner and its SURE Marks and is likely to cause purchasers and others erroneously to believe that Registrant's goods are Petitioner's goods or that Registrant or its goods are in some way legitimately connected with, sponsored, or approved by Petitioner.

13. Registrant's use of SUGASURE dilutes the distinctiveness of Petitioner's SURE Marks individually and collectively.

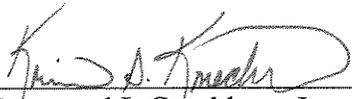
14. Accordingly, Registrant's registration of SUGASURE is damaging to Petitioner.

WHEREFORE, Petitioner prays that its petition be sustained and that Registration No. 2,805,684, be cancelled.

Petitioner herein submits the requisite filing fee of \$600. Please debit any deficiency or credit any overpayment to Account No. 16-0650. Please address all correspondence to Raymond I. Geraldson, Jr., Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, 311 South Wacker Drive, Suite 5000, Chicago, Illinois 60606.

PATTISHALL, McAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP,

Dated: January 12, 2009

By: 
Raymond I. Geraldson, Jr.
Kristen S. Knecht
311 South Wacker Drive
Suite 5000
Chicago, Illinois 60606
(312) 554-8000

Attorneys for Petitioner

EXHIBIT A



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Typed Drawing

Word Mark	ENSURE
Goods and Services	IC 005. US 046. G & S: LIQUID NUTRITIVE PREPARATIONS FOR ORAL OR GAVAGE FEEDING. FIRST USE: 19720317. FIRST USE IN COMMERCE: 19720317
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	72427152
Filing Date	June 9, 1972
Current Filing Basis	1A
Original Filing Basis	1A
Registration Number	0965204
Registration Date	July 31, 1973
Owner	(REGISTRANT) ABBOTT LABORATORIES CORPORATION ILLINOIS 100 ABBOTT PARK ROAD DEPT. 377/BLDG. AP6A ABBOTT PARK ILLINOIS 60064
Attorney of Record	MARY L. WINBURN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040108.
Renewal	1ST RENEWAL 20040108
Live/Dead Indicator	LIVE

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Int. Cl.: 5

Prior U.S. Cl.: 46

United States Patent and Trademark Office
10 Year Renewal

Reg. No. 965,204
Registered July 31, 1973
Renewal Term Begins July 31, 1993

**TRADEMARK
PRINCIPAL REGISTER**

ENSURE

ABBOTT LABORATORIES (ILLINOIS
CORPORATION)
ABBOTT PARK, IL 60064

FIRST USE 3-17-1972; IN COMMERCE
3-17-1972.

FOR: LIQUID NUTRITIVE PREPARA-
TIONS FOR ORAL OR GAVAGE FEED-
ING, IN CLASS 46 (INT. CL. 5).

SER. NO. 72-427,152, FILED 6-9-1972.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on May 25, 1993.*

COMMISSIONER OF PATENTS AND TRADEMARKS



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Typed Drawing

Word Mark	PEDIASURE
Goods and Services	IC 005. US 018. G & S: PEDIATRIC NUTRITIVE PREPARATION. FIRST USE: 19870130. FIRST USE IN COMMERCE: 19870130
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	73668373
Filing Date	June 22, 1987
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	November 17, 1987
Registration Number	1475612
Registration Date	February 9, 1988
Owner	(REGISTRANT) ABBOTT LABORATORIES TA ROSS LABORATORIES CORPORATION ILLINOIS 100 Abbott Park Road ABBOTT PARK ILLINOIS 60064
Attorney of Record	Nicole Hickey
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20080212.
Renewal	1ST RENEWAL 20080212
Live/Dead Indicator	LIVE

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Int. Cl.: 5

Prior U.S. Cl.: 18

United States Patent and Trademark Office

Reg. No. 1,475,612

Registered Feb. 9, 1988

**TRADEMARK
PRINCIPAL REGISTER**

PEDIASURE

ABBOTT LABORATORIES (ILLINOIS CORPORATION), TA ROSS LABORATORIES
ABBOTT PARK, IL 60064

FIRST USE 1-30-1987; IN COMMERCE
1-30-1987.

SER. NO. 668,373, FILED 6-22-1987.

FOR: PEDIATRIC NUTRITIVE PREPARATION, IN CLASS 5 (U.S. CL. 18).

ELAINE PARTHEMOS, EXAMINING ATTORNEY



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Typed Drawing

Word Mark	ENSURE
Goods and Services	IC 005, US 046, G & S: DIETARY FOOD SUPPLEMENTS; NAMELY, VITAMINS AND MINERALS IN A FLAVORED PUDDING BASE. FIRST USE: 19861029. FIRST USE IN COMMERCE: 19861029
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	73682161
Filing Date	September 2, 1987
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	January 26, 1988
Registration Number	1485012
Registration Date	April 19, 1988
Owner	(REGISTRANT) ABBOTT LABORATORIES CORPORATION ILLINOIS 100 ABBOTT PARK ROAD ABBOTT PARK ILLINOIS 60064
Attorney of Record	Nicole Hickey
Prior Registrations	0965204;1051691;AND OTHERS
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15, SECT 8 (6-YR), SECTION 8(10-YR) 20080408.
Renewal	1ST RENEWAL 20080408
Live/Dead	

Indicator LIVE

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Int. Cl.: 5

Prior U.S. Cl.: 46

United States Patent and Trademark Office **Reg. No. 1,485,012**
Registered Apr. 19, 1988

**TRADEMARK
PRINCIPAL REGISTER**

ENSURE

ABBOTT LABORATORIES (ILLINOIS CORPORATION)
ABBOTT PARK, IL 60064

FIRST USE 10-29-1986; IN COMMERCE
10-29-1986.

OWNER OF U.S. REG. NOS. 965,204, 1,051,691
AND OTHERS.

FOR: DIETARY FOOD SUPPLEMENTS;
NAMELY, VITAMINS AND MINERALS IN A
FLAVORED PUDDING BASE, IN CLASS 5 (U.S.
CL. 46).

SER. NO. 682,161, FILED 9-2-1987.

RICHARD A. STRASER, EXAMINING ATTORNEY



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Typed Drawing

Word Mark NEOSURE
Goods and Services IC 005. US 006 018 044 046 051 052. G & S: infant formula. FIRST USE: 19990100. FIRST USE IN COMMERCE: 19990100
Mark Drawing Code (1) TYPED DRAWING
Serial Number 75345035
Filing Date August 22, 1997
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition September 15, 1998
Registration Number 2269656
Registration Date August 10, 1999
Owner (REGISTRANT) Abbott Laboratories CORPORATION ILLINOIS 100 Abbott Park Road Abbott Park ILLINOIS 60064
Attorney of Record Mary L. Winburn
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20080827.
Renewal 1ST RENEWAL 20080827
Live/Dead Indicator LIVE

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Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 2,269,656

United States Patent and Trademark Office

Registered Aug. 10, 1999

**TRADEMARK
PRINCIPAL REGISTER**

NEOSURE

ABBOTT LABORATORIES (ILLINOIS CORPO-
RATION)
100 ABBOTT PARK ROAD
ABBOTT PARK, IL 600643500

FIRST USE 1-0-1999; IN COMMERCE
1-0-1999.

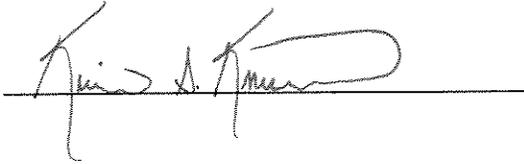
SN 75-345,035, FILED 8-22-1997.

FOR: INFANT FORMULA, IN CLASS 5 (U.S.
CLS. 6, 18, 44, 46, 51 AND 52).

RONALD MCMORROW, EXAMINING ATTOR-
NEY

CERTIFICATE OF SERVICE

I, Kristen S. Knecht, hereby certify that a copy of the foregoing **PETITION TO CANCEL** was served upon Jay H. Geller, Jay H. Geller a Professional Corporation, West Tower, 2425 Olympic Boulevard, Suite 4000, Santa Monica, California 90404-4030, via first class mail, postage pre-paid, on this 12th day of January, 2009.



A handwritten signature in cursive script, appearing to read "Kristen S. Knecht", is written over a horizontal line.