

ESTTA Tracking number: **ESTTA355607**

Filing date: **06/30/2010**

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	Natural Supplements and Remedies, Inc.		
Entity	Corporation	Citizenship	Florida
Address	8770 S.W. 72nd Street #363 Miami, FL 33173 UNITED STATES		

Attorney information	Oliver Alan Ruiz Malloy & Malloy, P.A. 2800 S.W. Third Avenue Miami, FL 33129 UNITED STATES oruiz@malloylaw.com, litigation@malloylaw.com Phone:305-858-8000		
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Registration Subject to Cancellation

Registration No	3237960	Registration date	05/01/2007
Registrant	NutriScience Corporation 100 8th Street Hermosa Beach, CA 90254 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2004/03/30 First Use In Commerce: 2004/03/30 All goods and services in the class are cancelled, namely: Nutritional supplements; Dietary supplements; Herbal supplements; Mineral supplements; Multi-vitamins; Vitamins and minerals; Dietary and herbal supplements; Herbal and plant derived products, namely herbal nutritional supplements; Food supplements, namely, anti-oxidants, homeopathic supplements; Nutraceuticals for use as a dietary supplement; Dietary supplements, namely supplements containing botanicals; Herbal supplements for sports nutrition; Anti-oxidants; Homeopathic supplements; Vitamin and mineral supplements
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2440741	Application Date	02/28/2000
Registration Date	04/03/2001	Foreign Priority Date	NONE
Word Mark	VITANERGY		

Design Mark	VITANERGY
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1990/02/00 First Use In Commerce: 1991/04/00 DISTRIBUTORSHIPS IN THE FIELD OF PILLS, TABLETS, CAPSULES, [POWDER MIXES, SYRUPS, HAIR TONICS, SPRAYS AND BEVERAGES] CONTAINING NATURAL INGREDIENTS FOR PROVIDING NUTRITION AND PROMOTING HEALTH

Attachments	75929208#TMSN.gif (1 page)(bytes) Petition to Cancel.pdf (13 pages)(261515 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	/Oliver Alan Ruiz/
Name	Oliver Alan Ruiz
Date	06/30/2010

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

In the matter of Registration No. 3,237,960
For the mark "VITAENERGY"

_____)	
NATURAL SUPPLEMENTS AND)	
REMEDIES, INC. d/b/a VITANERGY,)	
a Florida Corporation,)	
)	
Petitioner,)	
)	
vs.)	Cancellation No.
)	
NUTRISCIENCE CORPORATION,)	
a California Corporation,)	
)	
Respondent.)	
_____)	

PETITION TO CANCEL

COMES NOW the Petitioner, Natural Supplements and Remedies, Inc., d/b/a Vitanergy ("Petitioner"), a Florida corporation having an address of 8770 S.W. 72nd Street, #363, Miami, FL 33173, and petitions to cancel Registration No. 3,237,960, owned by NutriScience Corporation, a California corporation having an address of 100 8th Street, Hermosa Beach, CA 90254 ("or "Respondent"). Petitioner believes that it is or will be damaged by Registration No. 3,237,960, and alleges the following to petition for cancellation of the same:

CLAIM UNDER SECTION 2(d)

1. The alleged trademark sought to be cancelled is Registration No. 3,237,960, for the alleged mark "VITAENERGY" (herein referred to as the "VITAENERGY" Trademark") for use in connection with "Nutritional supplements; Dietary supplements; Herbal supplements; Mineral supplements; Multi-vitamins; Vitamins and minerals; Dietary and herbal supplements; Herbal and plant derived products, namely herbal nutritional supplements; Food supplements, namely, anti-oxidants, homeopathic supplements; Nutraceuticals for use as a dietary supplement; Dietary supplements, namely supplements containing botanicals; Herbal supplements for sports nutrition; Anti-oxidants; Homeopathic supplements; Vitamin and mineral supplements." ("Respondent's Goods"), filed May 13, 2004, with a registration date of May 1, 2007.

2. Since long prior to the acts of Respondent complained of herein, Plaintiff, and/or its predecessors, adopted and used the mark and trade name “VITANERGY” (herein referred to collectively as the “VITANERGY” Trademark”) for and in connection with dietary supplements, and distributorships in the field of pills, tablets, capsules, containing natural ingredients for providing nutrition and promoting health (the “Petitioner’s Goods and Services”).

3. The Petitioner’s “VITANERGY” Trademark has been adopted and used in commerce by Petitioner and/or its predecessors since at least as early as 1991. Such adoption and use of the mark was in interstate commerce, and since that time, the mark has been in continuous use in interstate commerce.

4. Petitioner is also the owner of U.S. Registration No. 2,440,741 for the mark “VITANERGY”, for and in connection with distributorships in the field of pills, tablets, capsules, containing natural ingredients for providing nutrition and promoting health. Said registration is valid, subsisting, and is incontestable. A current printout of information from the electronic database records of the USPTO, showing the current status and title of the above-referenced registration, is attached hereto as **Exhibit A**.

5. The Respondent’s “VITAENERGY” Trademark is identical or highly similar to Petitioner’s “VITANERGY” Trademark.

6. The goods identified in Respondent’s Registration No. 3,237,960 are identical or substantially similar and related to Petitioner’s goods and services. A current printout of information from the electronic database records of the USPTO, showing the current status and title of the above-referenced registration, is attached hereto as **Exhibit B**.

7. Respondent’s goods would be sold to the same consumers as Petitioner’s goods and services.

8. There is a likelihood of confusion between Petitioner’s “VITANERGY” Trademark for its goods and services and Respondent’s “VITAENERGY” Trademark for its goods, as set forth in Respondent’s Registration No. 3,237,960.

9. If Respondent is permitted to keep its registration for the mark "VITAENERGY" for and in connection with Respondent's Goods, there will be a continued likelihood of confusion, mistake, and deception among the consuming public and the trade, all in violation of §2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Petitioner prays that this Petition to Cancel be granted and that the aforesaid Registration No. 3,237,960 be cancelled and removed from the Federal Registry.

An electronic copy of this Petition to Cancel and the fee required in 37 CFR § 2.6(a)(16) are enclosed herewith.

Respectfully submitted,

Dated: June 30, 2010

By: /Oliver Alan Ruiz/
John Cyril Malloy, III
Florida Bar No. 964,220
Oliver Alan Ruiz
Florida Bar No. 524,786
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CERTIFICATE OF FILING

I HEREBY CERTIFY that the foregoing Petition to Cancel was filed electronically via the ESTTA, at the United States Patent and Trademark Office, Trademark Trial and Appeal Board's ESTTA electronic filing system, on June 30, 2010.

By: /Oliver Alan Ruiz/
Oliver Alan Ruiz
Florida Bar No. 524,786

EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2010-06-30 11:49:16 ET

Serial Number: 75929208 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2440741

Mark (words only): VITANERGY

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2010-04-27

Filing Date: 2000-02-28

Transformed into a National Application: No

Registration Date: 2001-04-03

Register: Principal

Law Office Assigned: LAW OFFICE 105

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: (NOT AVAILABLE)

Date In Location: 2010-04-27

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Natural Supplements and Remedies, Inc.

Address:

Natural Supplements and Remedies, Inc.
4051 Northwest 26th Street
Miami, FL 33142
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Florida

GOODS AND/OR SERVICES

International Class: 035

Class Status: Active

DISTRIBUTORSHIPS IN THE FIELD OF PILLS, TABLETS, CAPSULES, CONTAINING
NATURAL INGREDIENTS FOR PROVIDING NUTRITION AND PROMOTING HEALTH

Basis: 1(a)

First Use Date: 1990-02-00

First Use in Commerce Date: 1991-04-00

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-04-27 - First renewal 10 year

2010-04-27 - Section 8 (10-year) accepted/ Section 9 granted

2010-04-21 - TEAS Section 8 & 9 Received

2007-07-12 - Section 8 (6-year) accepted & Section 15 acknowledged

2007-06-11 - Response received to Post Registration action - Sections 8 & 15

2007-06-11 - PAPER RECEIVED

2007-06-08 - Section 8 (6-year) and Section 15 Filed

2007-06-08 - TEAS Section 8 & 15 Received

2006-11-20 - Case File In TICRS

2006-09-01 - Post Registration action mailed Section 8 & 15

2006-06-07 - Section 8 (6-year) and Section 15 Filed

2006-06-07 - TEAS Section 8 & 15 Received

2006-04-20 - Attorney Revoked And/Or Appointed

2006-04-20 - TEAS Revoke/Appoint Attorney Received

2001-04-03 - Registered - Principal Register

2001-01-09 - Published for opposition

2000-12-08 - Notice of publication

2000-08-28 - Approved for Pub - Principal Register (Initial exam)

2000-08-10 - Examiner's amendment mailed

2000-07-28 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Oliver A. Ruiz

Correspondent

Oliver A. Ruiz

Malloy & Malloy, P.A.

2800 S.W. 3rd Avenue

Miami FL 33129

Phone Number: 305-858-8000

Fax Number: 305-858-0008

EXHIBIT B

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2010-06-30 11:44:29 ET

Serial Number: 78418582 Assignment Information Trademark Document Retrieval

Registration Number: 3237960

Mark

VITAENERGY

(words only): VITAENERGY

Standard Character claim: Yes

Current Status: Registered.

Date of Status: 2007-05-01

Filing Date: 2004-05-13

Transformed into a National Application: No

Registration Date: 2007-05-01

Register: Principal

Law Office Assigned: LAW OFFICE 102

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2007-03-28

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. NutriScience Corporation

Address:

NutriScience Corporation
100 8th Street

Hermosa Beach, CA 90254

United States

Legal Entity Type: Corporation

State or Country of Incorporation: California

Phone Number: 310-372-7999

GOODS AND/OR SERVICES

International Class: 005

Class Status: Active

Nutritional supplements; Dietary supplements; Herbal supplements; Mineral supplements; Multi-vitamins; Vitamins and minerals; Dietary and herbal supplements; Herbal and plant derived products, namely herbal nutritional supplements; Food supplements, namely, anti-oxidants, homeopathic supplements; Nutraceuticals for use as a dietary supplement; Dietary supplements, namely supplements containing botanicals; Herbal supplements for sports nutrition; Anti-oxidants; Homeopathic supplements; Vitamin and mineral supplements

Basis: 1(a)

First Use Date: 2004-03-30

First Use in Commerce Date: 2004-03-30

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-05-01 - Registered - Principal Register

2007-03-20 - Law Office Registration Review Completed

2007-03-20 - Assigned To LIE

2007-02-23 - Allowed for Registration - Principal Register (SOU accepted)

2007-02-22 - Statement Of Use Processing Complete

2006-12-12 - Use Amendment Filed

2006-12-12 - TEAS Statement of Use Received

2006-07-25 - Noa Mailed - SOU Required From Applicant

2006-05-02 - Published for opposition
2006-04-11 - TEAS Change Of Correspondence Received
2006-04-12 - Notice of publication
2006-04-11 - TEAS Change Of Owner Address Received
2006-03-13 - Law Office Publication Review Completed
2006-02-24 - Assigned To LIE
2006-02-22 - Approved For Pub - Principal Register
2006-02-01 - Amendment From Applicant Entered
2006-01-17 - Communication received from applicant
2006-01-17 - PAPER RECEIVED
2005-07-11 - NON-FINAL ACTION E-MAILED
2005-07-11 - Non-Final Action Written
2005-06-20 - Teas/Email Correspondence Entered
2005-06-13 - Communication received from applicant
2005-06-13 - TEAS Response to Office Action Received
2004-12-12 - Non-final action e-mailed
2004-12-12 - Non-Final Action Written
2004-12-12 - Assigned To Examiner
2004-05-20 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Kurt Koenig

Correspondent

Kurt Koenig

Koenig & Associates

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