

ESTTA Tracking number: **ESTTA525032**

Filing date: **03/05/2013**

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	Gimbal Brothers, Inc.		
Entity	Corporation	Citizenship	California
Address	250 Hillside Boulevard South San Francisco, CA 94080 UNITED STATES		

Attorney information	Jennifer Lee Taylor Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105 UNITED STATES jtaylor@mofo.com, mmcdaniel@mofo.com Phone:415-268-6538		
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Registration Subject to Cancellation

Registration No	1018278	Registration date	08/12/1975
Registrant	Wyeth 90 Orville Drive Legal Department Bohemia, NY 11716 UNITED STATES		

Goods/Services Subject to Cancellation

Class U018 (International Class 005). First Use: 1947/00/00 First Use In Commerce: 1952/00/00 All goods and services in the class are cancelled, namely: DIETARY SUPPLEMENT OF VITAMINS AND MINERALS

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Petition to Cancel - NATUREVITE.pdf (4 pages)(139220 bytes) Exhibit A to Petition to Cancel.pdf (4 pages)(77925 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	/Jennifer Lee Taylor/
Name	Jennifer Lee Taylor

Date	03/05/2013
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GIMBAL BROTHERS, INC.,

Petitioner,

vs.

SOLGAR, INC.,

Respondent.

Cancellation No.: To Be Assigned

Registration No.: 1,018,278

Issued: August 12, 1975

Mark: NATUREVITE

PETITION FOR CANCELLATION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Gimbal Brothers, Inc. (“Petitioner”), a California corporation with its principal place of business at 250 Hillside Boulevard, South San Francisco, California 94080-1644, believes that it is and will continue to be injured by Registration No. 1,018,278, and hereby petitions to cancel the same.

To the best of Petitioner’s knowledge, the name and address of the current owner of the registration is Solgar, Inc. (“Respondent”), a Delaware corporation with its principal place of business at 90 Orville Drive, Bohemia, New York, 11716, United States.

The grounds for cancellation are as follows:

1. Petitioner is a manufacturer, producer, and distributor of candy products and vitamins throughout the United States. It commenced using the NATUREVITES mark in connection with vitamins in February 2013.

2. On March 1, 2013, Petitioner applied to register the NATUREVITES mark for vitamins and dietary supplements in International Class 5. Petitioner's application was assigned Application Serial No. 85/864,641. Attached as Exhibit A is a true and correct copy of the TSDR status report for Application Serial No. 85/864,641.

3. On information and belief, Respondent owns U.S. Registration No. 1,018,278 for the mark NATUREVITE for "dietary supplement of vitamins and minerals" in International Class 5.

4. On information and belief, Respondent has discontinued use of the NATUREVITE mark in the United States and is no longer selling or offering vitamin or mineral supplements under the NATUREVITE mark.

5. On information and belief, Respondent does not have any intent to resume use of the NATUREVITE mark in connection with vitamin or mineral supplements.

6. Petitioner will be seriously injured if Respondent is permitted to retain the registration sought herein to be canceled, as Petitioner believes that the U.S. Patent & Trademark Office is likely to conclude that a likelihood of confusion exists between Petitioner's NATUREVITES mark and Respondent's NATUREVITE mark and on that basis refuse Petitioner's application. The continuing registration of Respondent's NATUREVITE mark will prevent the allowance and subsequent registration of Petitioner's application for NATUREVITES in spite of the fact that Respondent apparently has abandoned all its rights to said registration.

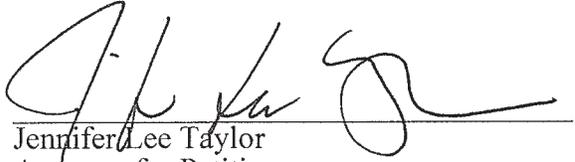
7. Filing Fee: The U.S. Patent & Trademark Office is authorized to charge \$300.00 for the Petition for Cancellation to **Deposit Account 03-1952** (Reference No. 59829-6012501).

WHEREFORE, Petitioner prays that Registration No. 1,018,278 be canceled.

Respectfully submitted,

Dated: March 5, 2013

By:

A handwritten signature in black ink, appearing to read "Jennifer Lee Taylor", written over a horizontal line.

Jennifer Lee Taylor
Attorney for Petitioner
Gimbal Brothers, Inc.

Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-6538
Facsimile: (415) 268-7522

PROOF OF SERVICE BY MAIL

I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on March 5, 2013, I served a copy of:

PETITION FOR CANCELLATION

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

**Solgar, Inc.
90 Orville Drive
Bohemia, New York 11716**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 5th day of March 2013.

Mary S. McDaniel
(typed)



(signature)

EXHIBIT A

Generated on: This page was generated by TSDR on 2013-03-05 15:43:55 EST

Mark: NATUREVITES

NATUREVITES

US Serial Number: 85864641

Application Filing Date: Mar. 01, 2013

Register: Principal

Mark Type: Trademark

Status: New application will be assigned to an examining attorney approximately 3 months after filing date.

Status Date: Mar. 05, 2013

Mark Information

Mark Literal Elements: NATUREVITES

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: Vitamins, dietary supplements

International Class: 005 - Primary Class

U.S Class: 006, 018, 044, 046, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Feb. 28, 2013

Use in Commerce: Feb. 28, 2013

Basis Information (Case Level)

Filed Use:	Yes	Currently Use:	Yes	Amended Use:	No
Filed ITU:	No	Currently ITU:	No	Amended ITU:	No
Filed 44D:	No	Currently 44D:	No	Amended 44D:	No
Filed 44E:	No	Currently 44E:	No	Amended 44E:	No
Filed 66A:	No	Currently 66A:	No		
Filed No Basis:	No	Currently No Basis:	No		

Current Owner(s) Information

Owner Name: Gimbal Brothers, Inc.
250 HILLSIDE BLVD
Owner Address: South San Francisco, CALIFORNIA 940801644
UNITED STATES

Legal Entity Type:	CORPORATION	State or Country Where Organized:	CALIFORNIA
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Attorney/Correspondence Information

Attorney of Record

Attorney Name: Rosemary S. Tarlton **Docket Number:** 59829-601200

Correspondent

Correspondent Name/Address: ROSEMARY S. TARLTON
MORRISON & FOERSTER LLP
425 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105-2482
UNITED STATES

Phone: 415 268 6810 **Fax:** 415 268 7522

Domestic Representative - Not Found

Prosecution History

Proceeding

Date	Description	Number
Mar. 05, 2013	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: NEW APPLICATION
PROCESSING

Date in Location: Mar. 05, 2013