

10-28-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #73

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

Cancellation No. 29,773

Cancellation No. 29,864

Nutro Products, Inc.

v.

M.I. Industries, Inc.

RESPONSE

Assistant Commissioner for Trademarks

Arlington Virginia 22202,3513

Attn: Clara Vela

Sir:

This is in response to the letter dated October 23, 2002, a copy of which is enclosed for your convenience

This dispute was settled by agreement between the parties. Both of these cancellation proceedings have become moot.

Cancellation 29,773 related to Reg. No. 2,229,094 for Natural Choice. It was assigned to the cancellation petitioner. At the Examiner level this removed all rejections to petitioner's application to obtain its own registration and as a consequence, Reg. No. 2,587,083 issued July 2, 2002 on Serial No. 75/694,901. A copy of an amendment dated April 7, 2000 is attached with its exhibits whose Remarks explain the situation in detail. Cancellation 29,773 is therefore moot and should be dismissed from the Board's docket.

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TRADEMARK TRIAL AND APPEAL BOARD

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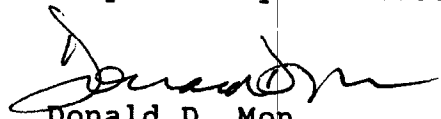
"Express Mail" mail label Date of Deposit
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and to addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513

Donald D. Hou
Donald D. Hou Reg. No. 16,255

Cancellation 29,864 related to Reg. No. 2,200,560 for Natural Choice Meat Counter Treats. This registration was voluntarily surrendered by the respondent herein, and was cancelled. A copy of the Voluntary Surrender document is enclosed. Cancellation 29,864 is therefore moot and should be dismissed from the Board's docket.

Should there be a problem, a phone call to the undersigned would be much appreciated.

Respectfully submitted



Donald D. Mon
Attorney for Applicant
Registration No. 18,255

DDM:gk
(626)793-9173

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Cancellation No. 29,773
Cancellation No. 29,864

Nutro Products, Inc.

v.

M. I. Industries, Inc.

MAILED
OCT 23 2002
PAT. & T.M. OFFICE

The parties are allowed until thirty days from the mailing date of this order to inform the Board of the status of the civil action which occasioned the suspension of this proceeding. If no response to this order is received from either party, then proceedings will be resumed and appropriate dates will be reset by the Board.



Clara Vela,
Legal Assistant,
Trademark Trial and
Appeal Board
(703) 308-9330, ext. 150

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

In the Matter of:
Trademark Registration No. 2,200,560
Mark: NATURAL CHOICE - MEAT COUNTER QUALITY TREATS
Date of Issue: October 27, 1998

NUTRO PRODUCTS, INC., a California
Corporation,

Petitioner,

vs.

M.I. INDUSTRIES, INCORPORATED,

Respondent.

)
)
) VOLUNTARY SURRENDER OF
) REGISTRATION WITHOUT
) PREJUDICE WITH CONSENT OF
) PETITIONER

)
) Cancellation No. 29,864
) Registration No.: 2,200,560
) Date of Issue: October 27, 1998
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VOLUNTARY SURRENDER OF REGISTRATION WITHOUT PREJUDICE
WITH CONSENT OF PETITIONER

In accordance with agreement by the parties, Registrant, M.I. Industries, hereby
voluntarily surrenders Registration No. 2,200,560 for the mark "NATURAL CHOICE":

"Exhibit B"

MEAT COUNTER QUALITY TREATS" without prejudice.

Respondent
M.I. Industries, Incorporated

Dated:

By: Robert S. Milligan
Robert S. Milligan
President

Petitioner, Nutro Products, Inc., hereby consents to the voluntary surrender by
Registrant of Registration No. 2,200,560.

Petitioner
Nutro Products, Inc.

Dated:

By: _____
David T. Traitel
Chairman of the Board

"Exhibit B"

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

**In the Matter of
Trademark Registration No. 2,229,094
Mark: NATURAL CHOICE
Date of Issue: March 2, 1999**

**NUTRO PRODUCTS, INC., a California
Corporation,**

Petitioner,

vs.

M.I. INDUSTRIES, INCORPORATED,

Respondent.

)
)
) **STIPULATION TO DISMISS**
) **CANCELLATION PROCEEDING**
) **WITHOUT PREJUDICE**
)
)

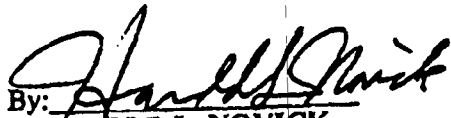
) **Cancellation No. 29,773**
) **Registration No.: 2,229,094**
) **Date of Issue: March 2, 1999**
)
)
)
)

**STIPULATION TO DISMISS CANCELLATION PROCEEDING WITHOUT
PREJUDICE**

**It is hereby stipulated by and between Petitioner, NUTRO PRODUCTS, INC. and
Respondent, M.I. INDUSTRIES, INCORPORATED, that Cancellation Proceeding**

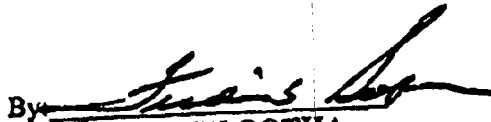
Number 29,773, according to agreement of the parties, be dismissed without prejudice.

Dated: March 21, 2000

By: 

HAROLD L. NOVICK
Nath And Associates
1030 15th Street, N.W., Sixth
Floor
Washington, D.C. 20005
Attorney for Respondent

Dated: March 21, 2000

By: 

FREDERICK GOTHA
Attorney for Petitioner
80 S. Lake Ave., Ste 823
Pasadena, CA 91101
Tele: (626) 796-1849

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Time In 2:20 AM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee
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No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials	Total Postage & Fees \$ 11.75

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	Customer Signature

FROM: (PLEASE PRINT) PHONE 626 793 9173 DONALD O. MON 750 E GREEN ST STE 303 PASADENA CA 91101-2134 4391A	TO: (PLEASE PRINT) PHONE Box Response - No Fee Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, Virginia 22202-3513
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Case Products, Inc.

Applic 04-07-2000
 Serial U.S. Patent & TMO/TM Mail Rcpt Dt. #70 Products, Inc.
 Filed: 94,901
 Trademark April 29, 1999
 Attorney: Ysa de Jesus

For: NATURAL Choice

Amendment/Voluntary Surrender/Stipulation to
 Dismiss Cancellation Proceedings/Certificate
 of Express Mail /Copy of Assignment

Mailed: April 7, 2000 (Express Mail)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Nutro Products, Inc.
 Serial No.: 75/694,901
 Filed: April 29, 1999
 Trademark
 Attorney: Ysa de Jesus

For: NATURAL CHOICE
 Pasadena, California 91101
 April 7, 2000

AMENDMENT

Assistant Commissioner for Trademarks
 Arlington, Virginia 22202-3513

Sir:

Please enter this amendment in the above-identified
 trademark application.

IN THE STATEMENT:

Page 1 line 12 1/2, after "commerce" please enter the
 following new paragraph:

--Applicant owns United States trademark application No.
 2,229,094.--

REMARKS

In his response dated February 24, 2000, the undersigned
 discussed the rejections of this application, and discussed the
 existence of litigation and petitions to cancel. Suspension of

EL569373924 US Date of Deposit 7 Apr 00
 "Express Mail" mail label
 I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to
 Addressed service under 37 CFR 1.10 on the date indicated above and to addressed to the Assistant Commissioner for Trademarks,
 2900 Crystal Drive, Arlington, VA 22202-3513
 Donald D. Hon Reg. No. 18,255

examination of this registration was requested. These matters have been settled in applicant's favor, so that resumption of examination is requested at this time.

In the examination of this trademark application the Examining Attorney will find two existing registrations, Nos. 2,200,560 for Natural Choice - Meat Counter Quality treats, and 2,229,094 for Natural Choice. Only '094 has been cited. The applicant herein filed petitions to cancel both of those registrations, Cancellation Nos. 29,864 and 29,773, respectively, and a civil action in Federal court to enjoin the registration M.I. Industries from further use of the mark.

A settlement has been reached to all of these proceedings. Reg. No. 2,200,560 has been surrendered by the registrant. Reg. No. 2,229,094 (for Natural Choice), the ground for rejection, has been assigned to the applicant. This assignment is being submitted for recordation today.

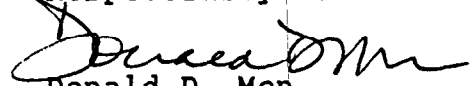
A copy of the surrender of Reg. No. 2,200,560, a copy of the stipulation to dismiss the cancellation proceeding for Reg. No. 2,229,094, and a copy of the assignment to applicant of Reg. No. 2,229,094 as submitted for recordation are all enclosed herein for the files of this application.

Ownership by the applicant of Reg. No. 2,229,094 is claimed by amendment, above, thereby removing it as a ground for rejection.

The rejection on Nature's Choice is discussed in the previous response, and is repeated here by reference. In view of applicant's ownership of the previously granted registration of Natural Choice, this rejection is submitted also to be moot.

The application appears to be in condition for allowance. Resumption of prosecution, reconsideration of this application allowance, and passage to publication of this application are respectfully solicited.

Respectfully submitted,



Donald D. Mon
Attorney for Applicant
Registration No. 18,255

DDM:gk
(626)793-9173
enc.