

ESTTA Tracking number: **ESTTA30351**

Filing date: **04/12/2005**

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

Proceeding	92044270
Party	Defendant NATURE'S WAY PRODUCTS, INC. NATURE'S WAY PRODUCTS, INC. 10 MOUNTAIN SPRINGS PARKWAY SPRINGVILLE, UT 84663
Correspondence Address	NATURE'S WAY PRODUCTS, INC. 10 MOUNTAIN SPRINGS PARKWAY SPRINGVILLE, UT 84663
Submission	Answer
Filer's Name	Robyn L. Phillips
Filer's e-mail	rphillips@wnlaw.com
Signature	/Robyn L. Phillips/
Date	04/12/2005
Attachments	001 Answer.pdf (4 pages)

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

In the matter of United States Registration No. 1,500,164
Date of Issue: August 16, 1988
Mark: THE GOLD STANDARD

SMART CHOICE FOOD SALES, LTD.,)	Cancellation No. 92,044,270
Petitioner,)	
v.)	ANSWER TO PETITION TO CANCEL
NATURE’S WAY PRODUCTS, INC.,)	
Registrant.)	

In response to the Petition to Cancel No. 92,044,270, dated February 3, 2005 (“Petition”), Registrant Nature’s Way Products, Inc. (“Nature’s Way” or “Registrant”), hereby answers the Petition filed by Petitioner Smart Choice Food Sales, Ltd. (“Petitioner”) as follows:

ANSWER TO PETITION TO CANCEL

1. Registrant admits that Nature’s Way is the owner of United States Trademark Registration No. 1,500,164 for the mark “THE GOLD STANDARD” (“the ‘164 Registration”). Registrant affirmatively avers that it is a Utah Corporation with its principle place of business being 1375 North Mountain Springs Parkway, Springville, Utah 84663.

2. Registrant admits that Petitioner has filed a Petition to Cancel the ‘164 Registration. Registrant denies each and every remaining allegation of paragraph 2 of the Petition to Cancel.

3. Registrant is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 3 of the Petition to Cancel, and therefore denies the same.

4. Denied.

AFFIRMATIVE DEFENSES

By way of defense to the allegations set forth in the Petition, Registrant asserts the following:

FIRST AFFIRMATIVE DEFENSE

Petitioner's Petition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Petitioner is not likely to be damaged by Registrant's mark and, therefore, lacks standing to petition for cancellation of the same.

THIRD AFFIRMATIVE DEFENSE

Petitioner's claims are barred by the doctrine of laches, estoppel, acquiescence and/or waiver.

FOURTH AFFIRMATIVE DEFENSE

Petitioner's claims are barred by unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Registrant has used the mark "THE GOLD STANDARD" covered by United States Registration No.1 ,500,164, and has not abandoned the same.

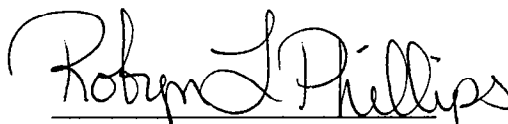
RELIEF REQUESTED

WHEREFORE, having fully answered the Petition, Registrant prays that the Petition be denied and that the Petition be dismissed with prejudice.

DATED this 12th day of April.

Respectfully submitted,

WORKMAN NYDEGGER



Robyn L. Phillips, Registration No. 39,330

Brett A. Hansen, Registration No. 48,871

1000 Eagle Gate Tower

60 East South Temple

Salt Lake City, Utah 84111

Telephone: (801) 533-9800

Facsimile: (801) 328-1707

Attorneys for Registrant

Nature's Way Products, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **ANSWER TO PETITION TO CANCEL** was served on Petitioner by mailing a true copy thereof to its record, by First Class Mail, postage prepaid, this 12th day of April, 2005, in an envelope addressed as follows:

Scott J. Fields, Esquire
NATIONAL IP RIGHTS CENTER, LLC
550 Township Line Road, Suite 400
Blue Bell, PA 19422

A handwritten signature in black ink that reads "Robert J. Phillips". The signature is written in a cursive style and is positioned above a horizontal line.

J:\10265141\001 Answer.doc