

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL 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 FOODS, LTD.,	:	Cancellation No. 92,044,270
Petitioner,	:	73708732
	:	
v	:	
	:	
NATURE'S WAY PRODUCTS, INC.,	:	
Registrant.	:	

MOTION FOR SUMMARY JUDGMENT IN FAVOR OF PETITIONER

COMES NOW, the Petitioner and respectfully requests the Entry of Summary Judgment pursuant to Rule 56, F.R. Civ. P. This Motion is supported by the attached Memorandum of Law, Exhibits and the Declaration of Robert Seader. A proposed form of Order is attached hereto.

Respectfully submitted,



Scott J. Fields, Esquire
National IP Rights Center, LLC
550 Township Line Road
Suite 400
Blue Bell, PA 19422
Phone: (610) 680-2301
Facsimile: (610) 680-2319
E-mail: sfields@niprc.com



07-29-2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL 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 FOODS, LTD.,	:	Cancellation No. 92,044,270
Petitioner,	:	
	:	CONFIDENTIAL
v	:	SUBJECT TO PROTECTIVE ORDER
	:	
NATURE'S WAY PRODUCTS, INC.,	:	
Registrant.	:	

MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT
PURSUANT TO RULE 56 F.R. Civ.P

I. INTRODUCTION

This paper is respectfully submitted in support of the Petitioner's Motion for Summary Judgment. The present Petition avers that the Registrant's "The Gold Standard" mark has been abandoned. As will be set forth herein, Registrant has not produced a single piece of evidence supporting its use of "The Gold Standard" or rebutting the allegation of abandonment. Petitioner is entitled to Summary Judgment as a matter of law.

II. FACTUAL BACKGROUND

The present Petition was filed following a factual investigation by Petitioner. This investigation included a thorough review of Registrant's product literature, an examination of Registrant's products and extensive Internet searches using search engines such as Google. This examination clearly revealed that "The Gold Standard"

mark had been abandoned. (Seader Decl. ¶¶2-4). Petitioner also called Registrant's Utah offices and requested THE GOLD STANDARD product, but was informed that no such product existed. (Seader Decl. ¶¶2-4).

Following the filing of the Answer, Petitioner served a First Set of Interrogatories and Document Requests on May 3, 2005. This discovery was largely directed toward the central issue in the case, that of abandonment. See attached Exhibit A. These discovery requests sought specific detailed evidence regarding trademark usage and sales using the mark at issue.

On June 8, 2005, Registrant provided only Objections to the discovery purportedly based upon the lack of a Protective Order. After a telephone conference between counsel, a Protective Order was worked out between the parties and entered. Counsel for Registrant also promised to promptly provide evidence of usage, if it existed. On or about June 16, 2005, three (3) documents were produced. See Exhibit B. The first, Exhibit B-1, purports to be an unlabeled advertisement which shows a group of Registrant's products and includes the words "The Gold Standard" in conjunction with Registrant's house mark. Exhibit B-2 is the same advertisement which purports to appear in a 2005 edition of *Healthsights*. Registrant has produced no evidence that this document was ever actually published and/or when and/or where. Finally, the Registrant provided a document purporting to be a label of a Ginsun Extract Product with a 1994 copyright notice. Exhibit B-3. This document includes the words "The Gold Standard" in small type. No evidence of when or where this label was ever actually used has been provided.

Registrant further agreed to provide full responses to the Interrogatories and discovery requests by July 15, 2005, at least as to the issue of abandonment. This deadline was not met. On July 19, 2005, an alleged internal Nature's Way trademark survey (dated June, 2002) was disclosed with a letter (Exhibit C). According to counsel's cover letter accompanying the document, this purports to be a listing of trademarks, to be retained by Registrant at that time. Other than the four (4) documents, Registrant has provided no interrogatory responses which are presently overdue by approximately seven (7) weeks.

III. ARGUMENT

1. The Summary Judgment Standard

The summary judgment procedure is a pretrial device to dispose of cases in which there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. See, *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985); *Block Drug Co. v. Morton-Norwich Products, Inc.*, 202 USPQ 157 (TTAB 1979); and cases cited therein. Fed.R.Civ.P. 56(c); *Greyhound Corp. v. Both Worlds Inc.*, 6 USPQ2d 1635I (TTAB 1988). Entry of summary judgment is appropriate only where there are no genuine disputes as to material facts and judgment may be rendered as a matter of law based on the undisputed facts. See *Sweats Fashions v. Panill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). Issues of fact are not to be tried via a motion for summary judgment, but rather, all that is to be determined is whether issues of fact exist which should be tried. See *Continental Can Co USA Inc. v.*

Monsanto Co., 948 F.2d 1264, 20 USPQ2d 1746 (Fed. Cir. 1991), and *Flatley v. Trump*, 11 USPQ2d 1284 (TTAB). Summary judgment is appropriate here.

2. The Abandonment Standard

Section 45 of the Trademark Act, 15 U.S.C. Section 1127, provides that a mark is abandoned when "its use has been discontinued with intent not to resume such use. Nonuse for two consecutive years shall be prima facie abandonment." In order to prevail on a claim for cancellation on the ground of abandonment, a party must allege and prove, abandonment of the mark as a result of nonuse or other conduct by the registrant. See Trademark Act Section 45, 15 U.S.C. Section 1127; *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). Introduction of evidence of nonuse of the mark for two consecutive years constitutes a prima facie claim of abandonment and shifts the burden to the party contesting abandonment to show either: (1) evidence to disprove the underlying fact triggering the presumption of two years nonuse or (2) evidence of an intent to resume use to disprove the presumed fact of no intent to resume use. See trademark Act 45, 15 U.S.C. Section 1127; *Imperial tobacco Ltd. V. Philip Morris Inc.*, 899 F.2d 1575, 14 USPQ2d 1390 (Fed. Cir. 1990); *see generally* 2J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, 17.06[2] (3d ed. 1992) citing *Cerveceria Cenroamericana S.A. v. Cerveceria India Inc.*, 892 F.2d 1021, 13 USPQ2d 1307 (Fed. Cir. 1989).

3. Registrant Has Provided No Evidence of Usage Or Non-Abandonment of "The Gold Standard"

Since the inception of this proceeding, Registrant has not produced a single piece of evidence that the mark "The Gold Standard" was ever used in commerce, at

any time, let alone in the 2 to 3 years preceding the filing of the present Cancellation Petition. There is not a single fact in the record showing use or rebutting the showing of abandonment. Registrant has failed to provide substantive answers to Petitioner's Interrogatories. Registrant has shown no evidence of sales, usage or affixation of The Gold Standard Mark to any of its myriad of products. All of this information was requested in Petitioner's Interrogatories 2-9 and Document Request Nos. 1-11. (Exhibit B).

In the five (5) months since the filing of the Petition, Registrant, a nationally known company, has only located and produced four (4) pieces of paper which even cursorily show the trademark in question. The four (4) documents produced do not address the abandonment issue and also do not show that the "The Gold Standard" was ever actually used as a trademark, let alone abandoned.

Documents B-1 and B-2 which may date from sometime in 2005, do not evidence present trademark usage. Aside from the recent date, they fail to show affixation to a product. As to B-2, it is not clear when the document was created or whether and when it was actually published. Nor does the 1994 label (B-3). Even Registrant's document purporting to be dated June, 2002 does not evidence any actual or ongoing usage or even resumption following non-usage. Even if an alleged intent not to abandon "The Gold Standard" existed in mid-2002 and can be gleaned from this document, it was clearly not acted upon even as of this date, approximately three (3) years later.

IV. CONCLUSION

Registrant has been unable to produce a single shred of evidence that the mark The Gold Standard was ever affixed to a single product in commerce, anywhere or at any time. The Registration should be cancelled as a matter of law.

A handwritten signature in black ink, appearing to read 'S. Fields', written over a horizontal line.

Scott J. Fields
Attorney for Petitioner

National IP Rights Center, LLC
550 Township Line Road
Suite 400
Blue Bell, PA 19422
(215) 680-2301

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL 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 FOODS, LTD.,	:	Cancellation No. 92,044,270
Petitioner,	:	
	:	
v	:	
	:	
NATURE'S WAY PRODUCTS, INC.,	:	
Registrant.	:	

DECLARATION OF ROBERT SEADER

Robert Seader hereby declares under penalty of perjury as follows:

1. I am the president and CEO of the Petitioner in the above captioned matter.
2. Prior to the commencement of the Cancellation Petition, Petitioner undertook a factual investigation into the abandonment issue.
3. Petitioner examined Registrant's products in stores, reviewed Registrant's websites, and reviewed Registrant's product literature and advertisements through internet searches for the use of The Gold Standard. No such usage was found.
4. Petitioner also called Nature's Way, inquired about them any products called Gold Standard and was informed that no such name existed.

I hereby declare that the foregoing is true and correct under penalty of perjury.

Robert Seader
Robert Seader

Date: 7/21/05

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

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

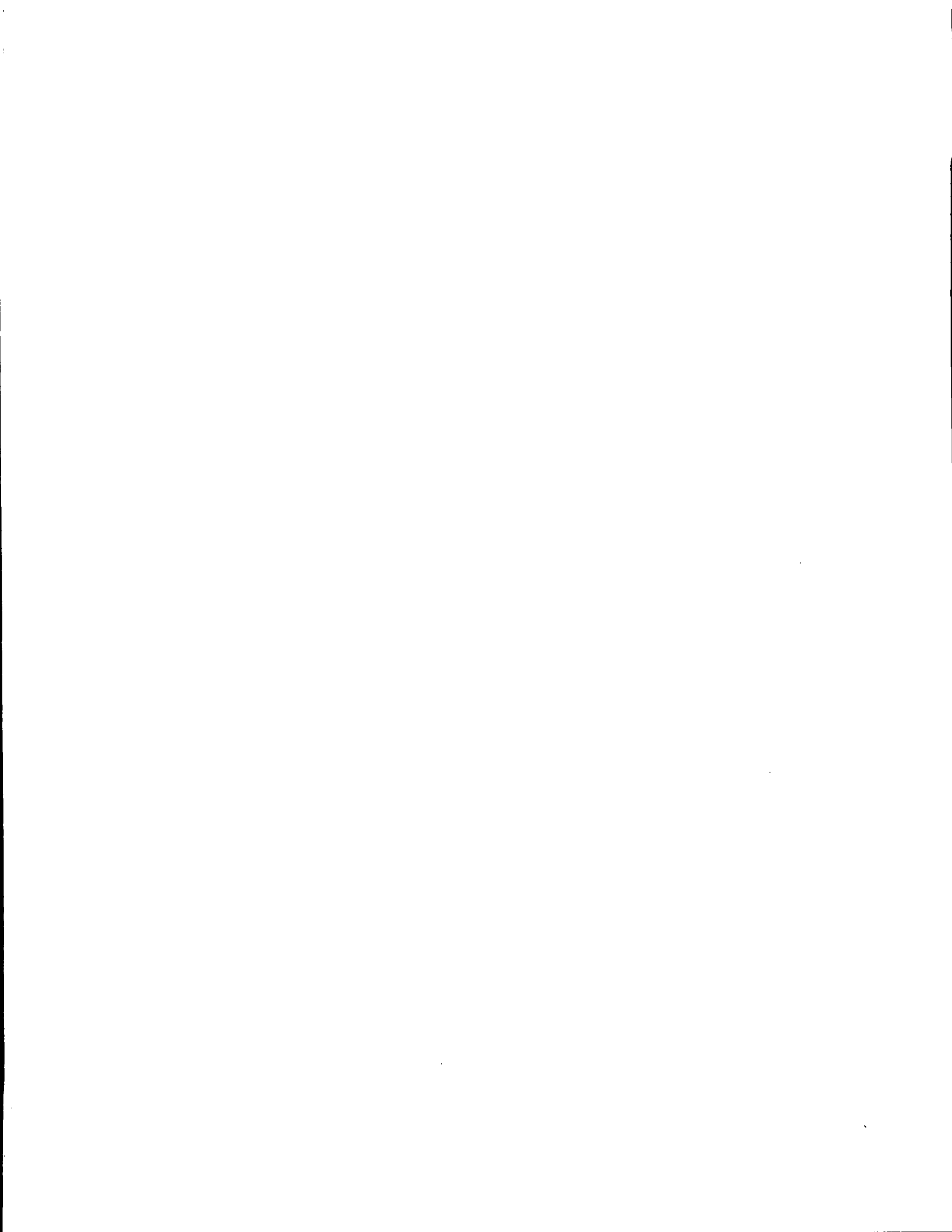
SMART CHOICE FOODS, LTD.,	:	Cancellation No. 92,044,270
Petitioner,	:	
	:	
v	:	
	:	
NATURE'S WAY PRODUCTS, INC.,	:	
Registrant.	:	

ORDER

Having come upon the Motion of Petitioner for Summary Judgment seeking cancellation of U.S. Registration No. 1,500.164, and having found no material facts in opposition thereof, Petitioner's Motion for Summary Judgment seeking to cancel U.S. Registration No. 1,500,164 is granted. The Commissioner is directed to cancel U.S. Registration No. 1,500,164 "THE GOLD STANDARD".

Trademark Trial and Appeals Board

Date: _____



13. The term "person" refers to any individual, corporation, proprietorship, association, joint venture, company, partnership or other business or legal entity, including governmental bodies and agencies.

14. The term "communication" refers to any exchange or transfer, known to Registrant, of information between two or more persons, whether written, oral, or in any other form.

15. In lieu of identifying a document or tangible thing, Registrant's supplying of a copy or photograph thereof or producing the document or thing for inspection and copying by Petitioner (each document to be designated as responsive to the particular interrogatory calling for its identification) pursuant to the Request for Production shall be deemed sufficient identification unless further identification is requested. However, if production of any document or tangible thing is refused, full identification of each such document or thing and the reason for refusing to produce it is requested.

16. Where an identified document is destroyed, or alleged to have been destroyed, state the date of and reason for its destruction, identify each person having any knowledge of its destruction, and each person responsible for its destruction.

17. Once a person has been identified in an answer to an interrogatory, it shall be sufficient thereafter when identifying that person merely to state his, her or its name.

18. The term "contract" refers to all contracts, sub-contracts, agreements or understandings regarding the purchase, procurement, acquisition, or use of the accused product, components or services relating to accused product, components or services relating to accused products as well as all documents relating to a "contract".

Interrogatory No. 1

Identify all persons who were or are involved in the preparation of these Interrogatories and Requests for Production.

Interrogatory No. 2

State the products on which the mark GOLD STANDARD had been used.

Interrogatory No. 3

Describe the structure of Nature's Way Products, Inc., including the identity of any and all officers and directors.

Interrogatory No. 4

Identify all publications of Nature's Way Products, Inc. which include the mark GOLD STANDARD.

Interrogatory No. 5

Identify documents which relate to any decision to change, abandon or remove the GOLD STANDARD mark from any product.

Interrogatory No. 6

State all facts in support of the Answer and Affirmative Defenses.

Interrogatory No. 7

State all legal grounds and supporting and/or refuting facts relating to any assertion that the GOLD STANDARD mark has been abandoned and has not been used in the years 1999, 200, 2001, 2002, 2003, 2004 and 2005.

Interrogatory No. 8

For each of the years 1999, 2000, 2001, 2002, 2003, 2004 and 2005, specify:

- (a) each product on which the mark GOLD STANDARD was affixed and marked; and
- (b) the level of sales for each product so marked.

- (c) identify a label showing the GOLD STANDARD mark for each product identified in sub-section (a).

Interrogatory No. 9

State all years or time periods in which Registrant ceased any usage of the GOLD STANDARD mark.

NATIONAL IP RIGHTS CENTER, LLC

By:



SCOTT J. FIELDS, ESQUIRE
550 Township Line Rd., Suite 400
Blue Bell, PA 19422
(610) 680-2301

Attorney for Petitioner
Smart Choice Food Sales, Ltd.

Date: 5-5-05

INSTRUCTIONS

A. As to any document that Registrant refused to produce, supply a description of the document by date, author, addressee, copy addressees, custodian and subject matter, is sufficient to allow a motion pursuant to Rule 37 of the Federal Rules of Civil Procedure for production of said document. If Registrant's refusal to produce is based upon a claim that the document is subject to privilege, state, as to such document, the nature and basis of the claim of privilege and the client upon whose behalf said privilege is claimed.

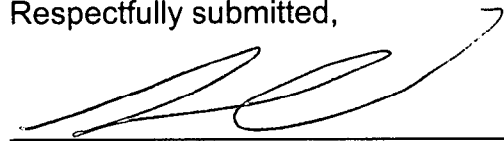
B. These requests are continuing in nature and any documents which . come into the control of Registrant its agents, servants, employees, or any person acting on its behalf, after these requests are served shall be produced forthwith.

REQUESTS

1. Produce all documents and things concerning and/or relating to the use of the name GOLD STANDARD by Registrant.
2. Produce all documents relating to internet websites and domains owned or controlled by Registrant and which use or show the mark GOLD STANDARD.
3. Produce all advertisements, sales brochures and marketing materials which in any way relate to the GOLD STANDARD product.
4. Produce all documents relating to all sales of products to which the mark GOLD STANDARD is affixed for the years 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, and 2005.

5. Produce all documents relating to the selection of the name GOLD STANDARD.
6. Produce all documents relating to any cessation of or abandonment of the mark GOLD STANDARD.
7. Produce all documents and things relating to the sales, revenues, costs, and profits of each product to which the mark GOLD STANDARD is affixed for each of the years 1999-2005.
8. Produce all documents and things related to the facts alleged in the Complaint or denied in the Answer and Affirmative Defenses.
9. Produce all documents and things relating to pending plans by Nature's Way Products, Inc. to market and/or sell products marked with GOLD STANDARD.
10. Produce all art work created for GOLD STANDARD, including that for advertisements, websites, packaging or marketing materials.
11. Produce all documents, the identity of which was called for in Petitioner's First Set of Interrogatories.

Respectfully submitted,



SCOTT J. FIELDS, ESQUIRE
NATIONAL IP RIGHTS CENTER, LLC
550 Township Line Rd.
Suite 400
Blue Bell, PA 19422
(610)-680-2301
Counsel for Petitioner
Smart Choice Food Sales, Ltd.

Dated: 5/5/05

RICK D. NYDEGGER
 BRENT F. LAUBNER
 THOMAS R. YUKSINICK
 LARRY R. LAYLOCK
 JONATHAN W. RICHARDS
 DAVID R. WIGGEL
 JOHN C. STURGEHAM
 JOHN M. GUNN
 CHARLES L. ROBERTS
 DANA L. TANGREN
 ERIC L. MARCHOFF
 CHARLES J. VENTURA
 TOMMY L. PHILLIPS
 RICHARD C. CHAMBERG *
 STEPHEN A. BRENNAN
 R. BURNS BRANTZEN
 DAVID R. TOWN
 DAVID B. DEJENICACI
 L. DAVID GREEN
 ADRIAN J. LEE
 FRASER D. RAY
 CARL T. REED

WORKMAN | NYDEGGER
 INTELLECTUAL PROPERTY ATTORNEYS

1000 EAGLE GATE TOWER
 60 EAST SOUTH TEMPLE
 SALT LAKE CITY, UTAH 84111
 TELEPHONE: (801) 533-9800
 FAX: (801) 328-1707
 WEBSITE: HTTP://WWW.WNLAW.COM

June 16, 2005

Via Facsimile
Original via U.S. Mail

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



Re: *Smart Choice Food Sales, LTD. v. Nature's Way Products, Inc.*
 Mark: THE GOLD STANDARD
 Cancellation No. 92,044,270
 Our File: 10265.141

R. PARRISH FRIEDMAN, JR.
 PETER F. MALIN, JR.
 L. RYK SLABY, D.D.
 WILLIAM R. RICTER
 ERIC M. KAMRATH
 ROBERT F. AWYCK
 JENS C. JENKINS
 KEVIN W. SPINER
 WILLIAM J. ARDAY
 MICHAEL B. DODD
 RYAN D. BENSON
 SARA D. JONES
 TIGE KETTLER
 JACNA J. JENSEN
 MATTHEW D. TOON
 J. LAYAR OLDSHAM
 MICHAEL J. PROLSHAM
 JOSEPH L. KRIPA
 BRETT A. HANSEN
 BRETT L. JOHNSON
 MATTHEW A. BABLOW
 WESLEY C. ROSSNER
 ANDREW S. HANSEN
 CHAD E. NYDEGGER
 JOSEPH C. PIA
 CLYTON E. DUKE
 RYAN N. FAIR *
 JAMES B. BLISSE
 KEIK R. HIGGIN
 KETTY SCHMIDLER
 MITCHELL M. BALLARD
 DAVID A. JONES
 SHANE K. JENSEN
 JONATHAN M. BENNIS, PLLC.

VERNON R. RICE §
 OF COURSE

Dear Mr. Fields:

This correspondence will follow-up our telephone conference of earlier today. Enclosed please find a copy of the marketing materials I mentioned and a label which we were able to locate. As I stated in our telephone conference, Nature's Way has used the mark and is currently using the mark "THE GOLD STANDARD." Nature's Way intends to vigorously defend its rights in its registered mark "THE GOLD STANDARD." As additional materials are located during the discovery process, we will, of course, pursuant to our discovery obligations, produce them to you.

If you have any questions regarding this matter please feel free to contact matter.

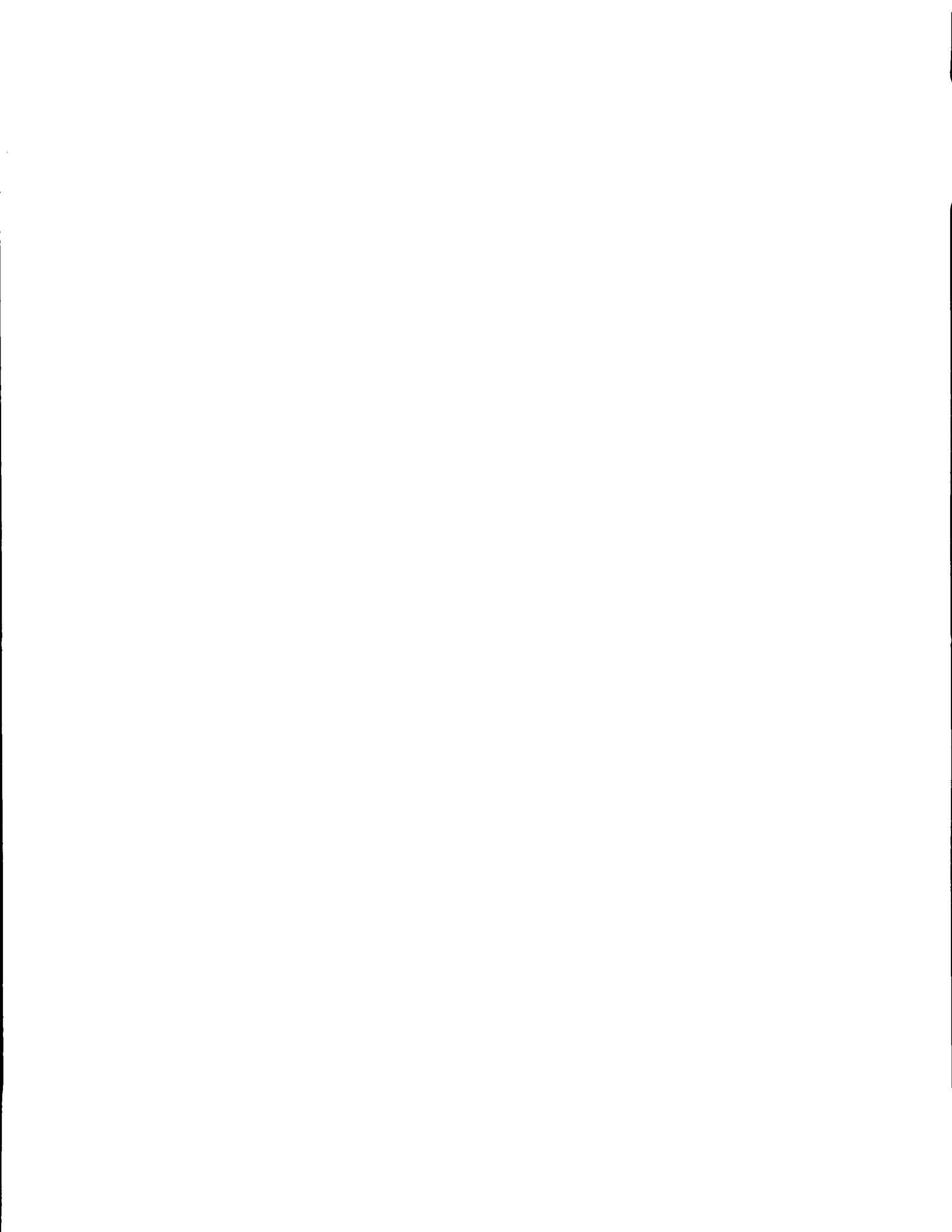
Cordially,

WORKMAN NYDEGGER

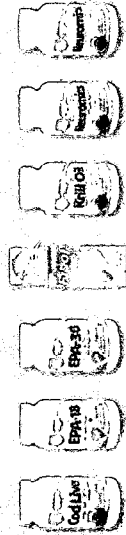
 ROBYN L. PHILLIPS

RLP:cm
 Enclosure
 W:\10265\141\CM0000006581V001.doc

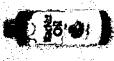
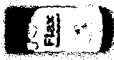
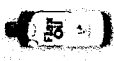
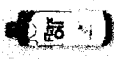
* Admitted only in California
 § Admitted only in Virginia



B-1



THE GOLD STANDARD
in essential fatty acid supplements



B-3

Recommended Use: Take one capsule once or twice daily.

Contains: Each soft gel contains 150 mg of Korean Panax Ginseng, guaranteed to contain 5% Ginsenosides. Does not contain caffeine, preservative, artificial colors or artificial additives.

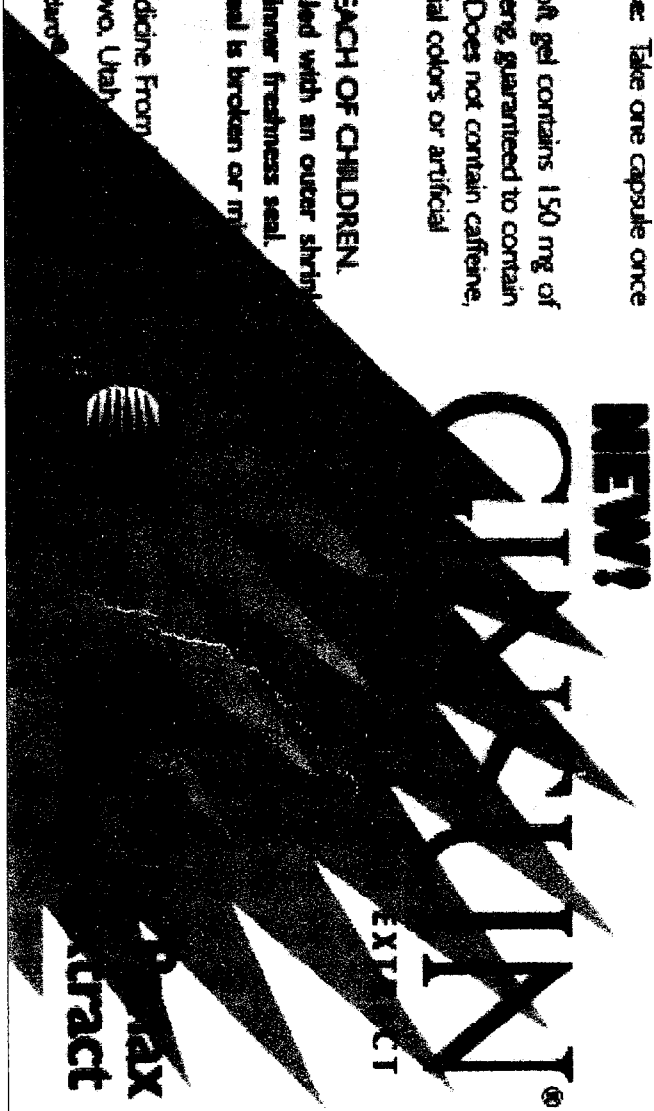
KEEP OUT OF REACH OF CHILDREN.

Double safety sealed with an outer shrink wrap film and an inner freshness seal, not open if either seal is broken or missing.

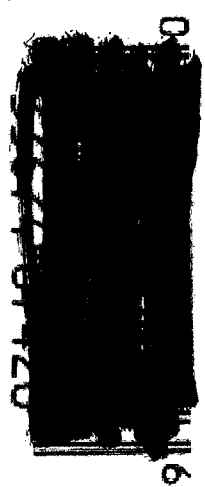
© 1994 R/O

A Product of: Medicine From Provo, Utah

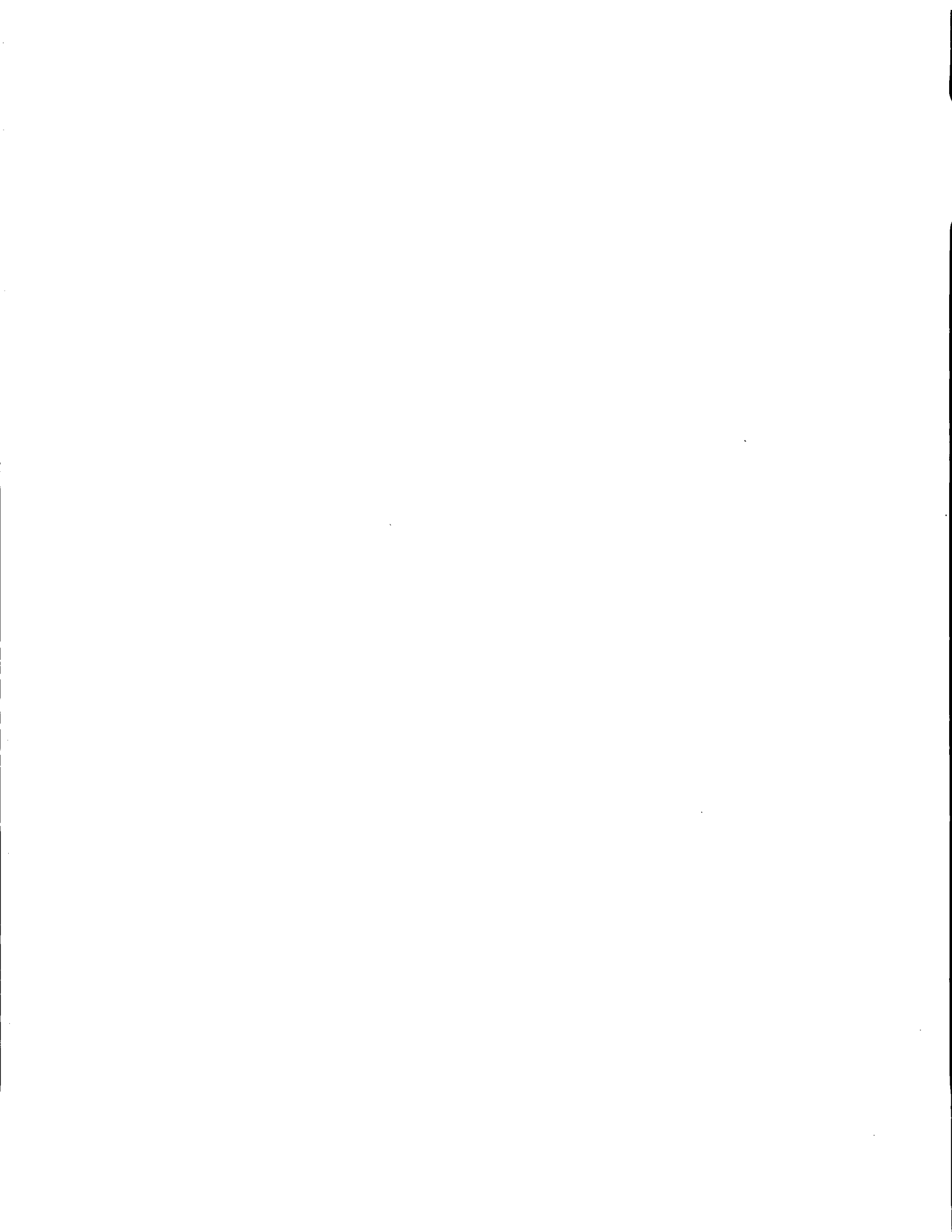
Meets The Gold Standard



Ginsun is a high potency vitality supplement for people leading active and demanding lifestyles. Ginsun combines properly aged premium Ginseng root and a state of the art extraction process to achieve consistent high potency. Each Ginsun soft gel capsule contains 150 mg of Panax Ginseng root extract — 50% more extract than other leading products. Extensive quality assurance and testing guarantees optimum and consistent potency of Ginsenosides in every capsule.



Quality Assurance #



Workman Nydegger

1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Phone: (801) 533-9800
Fax: (801) 328-1707

FAX TRANSMISSION COVER SHEET

Date: July 19, 2005
To: SCOTT J. FIELDS
NATIONAL IP RIGHTS CENTER, LLP
Fax: (610) 680-2319
Phone: (610) 680-2319
Re: *Smart Choice Food Sales, LTD. v. Nature's Way Products, Inc.*
Our File No. 10265.141
Sender: Robyn L. Phillips

YOU SHOULD RECEIVE 6 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 801-533-9800

Comments:

PRIVILEGED AND CONFIDENTIAL

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

RICK D. NYDEGGER
 BRENT P. JOHNSON
 THOMAS R. VUKOSNICK
 LARRY R. LAWLER
 JONATHAN W. RICHARDS
 DAVID R. WRIGHT
 JOHN C. STRINGHAM
 JOHN M. GUINN
 CHARLES L. ROBERTS
 DANA L. TANGREN
 ERIC L. MASCHOFF
 CHARLA J. VEVEKA
 ROBYN L. PHILLIPS
 RICHARD C. CHAMBERLAIN
 STERLING A. BRENNAN
 R. BURNS ISRAELSEN
 DAVID R. TODD
 DAVID B. DELLENBACH
 L. DAVID GRIPPIN
 ADRIAN J. LEE
 FRASER D. RAY
 CARL I. RYD

WORKMAN | NYDEGGER

INTELLECTUAL PROPERTY ATTORNEYS

1000 EAGLE GATE TOWER
 60 EAST SOUTH TEMPLE
 SALT LAKE CITY, UTAH 84111
 TELEPHONE: (801) 533-9800
 FAX: (801) 328-1707

WEBSITE: [HTTP://WWW.WNLAW.COM](http://www.wnlaw.com)

July 19, 2005

Via Facsimile
 Original via U.S. Mail

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

Re: *Smart Choice Food Sales, LTD. v. Nature's Way Products, Inc.*
 Mark: THE GOLD STANDARD
 Cancellation No. 92,044,270
 Our File: 10265.141

Dear Mr. Fields:

Nature's Way has continued to go through its various documents in an effort to comply with the written discovery served on behalf of your client. Enclosed is a copy of a document bearing Bates Nos. NATWAY 00001-0004, which is a trademark survey, dated 2002, completed by Mr. Rory Mahony, the president of Nature's Way Products, Inc. As you can see from page 4 of the document, Nature's Way intended to keep the mark and clearly did not intend to abandon the mark at issue.

As I have previously indicated, as discovery proceeds in this matter, Nature's Way intends to show and will show that there was no abandonment of the mark at issue. We believe that the enclosed materials further support Nature's Way's position that, even if there was a period of non-use, to which Nature's Way does not concede, there was no intent on behalf of Nature's Way to abandon the mark. As a result, Nature's Way intends to vigorously defend its Registration of the mark "The Gold Standard," and will oppose any attempt by your client to register any confusingly similar mark.

If you have any questions regarding this matter please feel free to contact matter.

Cordially,

WORKMAN NYDEGGER

Robyn L. Phillips
 ROBYN L. PHILLIPS

RLP:kc
 Enclosure
 WA10265141\KC0000004305V001.doc



R. PARRISH FREEMAN, JR.
 PETER F. MALIN, III
 J. RICK SEAR, PLLC
 WILLIAM R. RICHTER
 ERIC M. KAMLRATH
 ROBERT E. AYCOCK
 JENS C. JONKINS
 KLYNN W. STINEBAUGH
 WILLIAM J. ATHEY
 MICHAEL B. DODD
 RYAN D. BENSON
 SARA D. JONES
 TIGER KILLER
 JANNA L. JENSEN
 MATTHEW D. RYD
 J. LAVAR OGDHAM
 MICHAEL J. PROSSIAM
 JOSEPH L. KRUPA
 BRETT A. HANSEN
 BRITT L. JOHNSON
 MATTHEW A. BARLOW
 WESLEY C. RENARDER
 ANDREW S. HANSEN
 CHAD E. NYDEGGER
 JOSEPH G. PIA
 CLINTON E. DUNT
 RYAN N. FAIR
 JAMES B. BISHOP
 KIRK R. HARRIS
 KELLY SCHNEIDER
 MICHAEL M. HALLARD
 DAVID A. JONES
 SHANEK, JENSEN
 JONATHAN M. BENNIS, PLLC

VERNON R. RICE
 OF COUNSEL

REDACTED

TO: RORY STABONY

FROM:

6/4/02

TRADEMARK SURVEY -2002

We are in the process of reviewing the company's trademark portfolio and would like your assistance in determining which trademarks we should keep and which we should abandon. Please assist us by completing this Trademark Survey and returning it to *in the Legal Department by July 1st.* Thank you for your cooperation and assistance.

MARK	KEEP?	
	Yes	No
Adren-Aid		✓
America's Natural Healthcare Company	✓	
APH		
Arth-EZ	✓	
Bag-Pak		
BioActives	✓	
Breathe Original	✓	
BronCare	✓	
C & F		
Canrol	✓	
Caprinex	✓	
Carboload	✓	
CA-T		
Coax		
Cold Defense	✓	
ColdMed	✓	
Coldquell	✓	
ColdShield	✓	
Compel		
CongestEnd	✓	
Critical Mass	✓	
CS		
Daily Greens	✓	
Defendamins	✓	
Dependalax		✓
Digestin	✓	
Digestone		
Efacom	✓	
Efaguard	✓	

ATTORNEYS' EYES ONLY

NATWAY00001

MARK	KEEP?	
	Yes	No
Efamate	✓	
Efamed	✓	
Elimicol		✓
Enerchi	✓	
Enterodophilus	✓	
Envirocare		
European Select	✓	
ExtrActive	✓	
ExtrEnergy	✓	
FastActives	✓	
Fem-Cal	✓	
FiberCleanser 1	✓	
Fiberlite	✓	
Flex-Aid	✓	
Fresh-Gar	✓	
FuSho		
Garlix	✓	
Ginsun	✓	
GL		
H		
Heartsure	✓	
Herbalenza		
IF		
IGL		
Immunaid	✓	
Info Leaf	✓	
InnerActive	✓	
Kava Chill		
KB		
Keystone	✓	
Land Greens	✓	
Laxacil	✓	
Leaf Link	✓	
LG		
LifeCare	✓	
Liveril	✓	
Liveron	✓	
MaxActive	✓	
Medidophilus	✓	

But ?

??

ATTORNEYS' EYES ONLY

NATWAY00002

MARK	KEEP?	
	Yes	No
Mentalert	✓	
Mountain Greens	✓	
Natural Pharmacy and Design		
Nature of Healthy Living, The	✓	
NatureCalm	✓	
Nature's Fiber	✓	
Nature's Green	✓	
Nature's Select	✓	
Nature's Way the Natural Choice	✓	
Naturest	✓	
Nature's ColdCare	✓	
Naturgesic	✓	
Neo-Respin		
New Energy	✓	
Night Energizer	✓	
Night Eyes	✓	
NuPro & Design	✓	
Ocean Greens	✓	
Oriental Select	✓	
Pace	✓	
Pedjadophilus	✓	
Phytessentials	✓	
Phyto cleanse	✓	
PK		
Power Active	✓	
Power Up	✓	
Preventamins	✓	
Pro-Dophilus	✓	
Protectavite	✓	
Pure Power	✓	
Rejuvenaid	✓	
Relialax	✓	
Remem	✓	
* Repair	✓	
Reprive	✓	
RESP	✓	
Rheum-Aid	✓	
Self Defense	✓	
SinusCare	✓	

3-7?

do
65?

MARK	KEEP?	
	Yes	No
Smart Release	✓	
Spectralax	✓	
Stimune	✓	
Stinger	✓	
The Gold Standard	✓	
The Natural Edge	✓	
The Supplement to Remember	✓	
Throat Soothe	✓	
Tone-A-Lax	✓	
Tox-Stop	✓	
Traveler's Aid	✓	
Tummy Ease	✓	
UltraActive	✓	
Vascuaid	✓	
VF		
Virend	✓	
Visher Systems		
Winter Care	✓	
World Select	✓	

305?

Trademarks/TM1.1 US Trademarks/Trademark Survey2002#2

ATTORNEYS' EYES ONLY

NATWAY00004

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

SMART CHOICE FOOD SALES, LTD.	:	
	:	
Petitioner,	:	
v.	:	Cancellation No. 92044270
	:	
NATURE'S WAY PRODUCTS, INC.	:	Mark: GOLD STANDARD
	:	Registration No. 1,500,164
Registrant.	:	
	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion for Summary Judgment in favor of Petitioner, Memorandum in Support of Summary Judgment Pursuant to Rule 56 F.R.Civ. P., Declaration of Robert Seader, Exhibits and Order was served on Registrant by mailing a true copy thereof by facsimile and First Class Mail, postage prepaid, this 25th day of July, 2005, in an envelope addressed as follows:

Robyn L. Phillips, Esq.
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Facsimile: (801) 328-1707



Scott J. Fields