

ESTTA Tracking number: **ESTTA142715**

Filing date: **05/25/2007**

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	A-Live Foods, Inc.		
Entity	Corporation	Citizenship	Utah
Address	811 East 11000 North Cedar City, UT 84720 UNITED STATES		

Attorney information	Perry S. Clegg Bateman IP Law Group 8 East Broadway, Suite 550 Salt Lake City, UT 84111 UNITED STATES mail@batemanip.com Phone:801-533-0320		
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### Registration Subject to Cancellation

Registration No	2574627	Registration date	05/28/2002
Registrant	Nature's Way Products, Inc. 1375 North Mountain Springs Parkway Springville, UT 84663 UNITED STATES		
Goods/Services Subject to Cancellation	Class 005. First Use: 2001/08/16 , First Use In Commerce: 2001/08/16 Goods/Services: Vitamins, minerals and dietary supplements		

Attachments	3594ms-05-25-07 Petition for Cancellation (2).pdf ( 3 pages )(96099 bytes )
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Signature	/Perry S. Clegg/
Name	Perry S. Clegg
Date	05/25/2007

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

In the matter of U.S. Trademark Registration No. 2574627  
For the mark ALIVE!  
Published in the Official Gazette on November 6, 2001

A-Live Foods, Inc.,	)	Cancellation No. _____
	)	Registration No. 2574627
	)	Mark: ALIVE!
Petitioner,	)	Filing Date: June 14, 2001
	)	Registration Date: May 28, 2002
vs.	)	
	)	
Nature's Way Products, Inc.	)	
	)	
Respondent.	)	
_____	)	

**PETITION FOR CANCELLATION**

Petitioner, A-Live Foods, Inc., a Utah corporation having a principal place of business at 811 East 11000 North, Cedar City, Utah 84720 ("Petitioner" or "A-Live Foods"), believes it will be damaged by U.S. Trademark Registration No. 2574627 for the mark ALIVE!, registered May 28, 2002, for "Vitamins, minerals, and dietary supplements" (in International Class 005), and hereby petitions for cancellation of the same. As grounds for Cancellation, it is alleged that:

1. A-Live Foods, Inc. is the owner of the trademarks PREMIER ALIVE and PREMIER A-LIVE (the "PREMIER ALIVE Marks").
2. A-Live Foods, Inc. has been in the business of manufacturing and distributing vitamins, nutritional and dietary supplements since the early 1990s.
3. A-Live Foods has been using its trademark PREMIER A-LIVE and the A-LIVE

FOODS trade name in connections with nutritional and dietary products since at least as early as 1995.

4. Nature's Way Products, Inc. ("Respondent" or "Nature's Way") owns U.S. Trademark Registration No. 2574627 for the mark ALIVE! for "Vitamins, minerals, and dietary supplements" in International Class 005 (the "Nature's Way Registration").

5. The goods described in the Nature's Way Registration are for the same or similar goods which have been manufactured, distributed, and/or sold by Petitioner in connection with its PREMIER ALIVE marks and its A-LIVE FOODS trade name.

6. The application filing date for the Nature's Way Registration is June 14, 2001.

7. The date of first use alleged in the Nature's Way Registration is August 16, 2001.

8. Petitioner's date of first use with respect to its PREMIER A-LIVE mark and as well as its A-LIVE FOODS trade name predates the filing date for and date of first use alleged in the Nature's Way Registration.

9. Petitioner's rights in its PREMIER ALIVE marks and its A-LIVE FOODS trade name are senior to Respondent's rights in the ALIVE! mark.

10. On information and belief, Respondent's use and registration of the mark ALIVE! creates or suggests a false connections between Petitioner and Respondent and/or between Petitioner's products and Respondent's products.

11. On information and belief, Respondent's use and registration of the mark ALIVE! creates a likelihood of confusion between Petitioner and Respondent and/or between Petitioner's products and Respondent's products or the source thereof.

12. On information and belief, Petitioner is being damaged by the Nature's Way

Registration because such Registration supports and assists Respondent in the confusing and misleading use of Respondent's mark, and gives color and exclusive statutory rights to Respondent in violation and derogation of prior and superior rights or Petitioner.

WHEREFORE, Petitioner hereby prays that U.S. Trademark Registration No. 2574627 be cancelled.

DATED this 25<sup>th</sup> day of May, 2007.



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Randall B. Bateman  
Perry S. Clegg  
BATEMAN IP LAW GROUP  
8 East Broadway, Suite 550  
P.O. Box 1319  
Salt Lake City, Utah 84110  
Telephone: (801) 533-0320  
Fax: (801) 533-0323

Attorneys for Petitioner