

ESTTA Tracking number: **ESTTA176413**

Filing date: **11/21/2007**

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

Proceeding	92047568
Party	Plaintiff A-Live Foods, Inc.
Correspondence Address	Perry S. Clegg Bateman IP Law Group 8 East Broadway, Suite 550 Salt Lake City, UT 84111 UNITED STATES mail@batemanip.com
Submission	Motion to Join/Substitute Party
Filer's Name	Perry S. Clegg
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Signature	/Perry S. Clegg/
Date	11/21/2007
Attachments	3594op-11-21-07 Motion to Substiute Party.pdf (5 pages)(132775 bytes)

**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. 92047568
)	Registration No. 2574627
)	Mark: ALIVE!
Petitioner,)	Filing Date: June 14, 2001
)	Registration Date: May 28, 2002
vs.)	
)	
Nature's Way Products, Inc.)	
)	
Respondent.)	
_____)	

MOTION TO SUBSTITUTE PARTY

Pursuant to Rule 25 of the Federal Rules of Civil Procedure and TBMP § 512, Premier Alive, Inc. ("Premier Alive") moves that it be substituted for A-Live Foods, Inc. ("A-Live Foods") as the Petitioner herein.

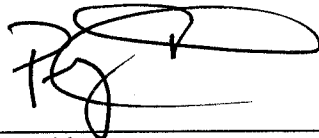
The Board may substitute a party in a proceeding when the interests that are the subject matter of the proceeding are transferred to that party. *See, e.g.*, Rule 25(c), Fed. R. Civ. P. (providing that, when interests in a matter are transferred, the court may upon motion "direct[] the person to whom the interest is transferred to be substituted in the action..."); *see also Raker Pain Factory v. United Lacquer Mfg. Corp.*, 141 U.S.P.Q. 407 (T.T.A.B. 1964) (holding that substitution of Opposer is routinely allowed when the cause of action remains unchanged and the party to be substituted has a relation of interest to the original Opposer).

A-Live Foods assigned to Premier Alive all of its rights, title and interest to the PREMIER ALIVE, PREMIER A-LIVE, and the A-LIVE FOODS trademarks and trade name(s) (hereinafter collectively the "Assigned Marks") cited by A-Live Foods in its Petition for Cancellation in the above-captioned Cancellation proceeding. See Exhibit A. By virtue of this assignment, Premier Alive is the owner of the Assigned Marks.

Due to the transfer of interests affected by the aforementioned assignment, Premier Alive claims the sole interest relating to the property being asserted by Petitioner in the above-captioned Cancellation proceeding and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede Premier Alive's ability to protect that interest.

WHEREFORE, Premier alive respectfully requests that the Board substitute Premier Alive as the Petitioner in this Cancellation proceeding.

DATED this 21st day of November, 2007.



Perry S. Clegg

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EXHIBIT A
To Motion To Substitute

NUNC PRO TUNC TRADEMARK ASSIGNMENT

State of Utah Nevada)
County of Iron)

SS. 880334146

WHEREAS, A-Live Foods, Inc. (hereinafter called "Assignor"), a Utah Corporation having a principal place of business at 811 East 11000 North Cedar City, UT 84720, USA, has adopted, used, and is using the trademarks and trade name PREMIER ALIVE and PREMIER A-LIVE, and A-LIVE FOODS (hereinafter collectively the "Assigned Marks"); and

WHEREAS, Premier Alive, Inc. (hereinafter called "Assignee"), a Utah corporation having its principle place of business at 811 East 11000 North Cedar City, UT 84720, USA, is desirous of acquiring said Assigned Marks;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Assignor does hereby assign unto Assignee, *nunc pro tunc*, as of November 1, 2007, all rights, title, and interest in and to said Assigned Marks, together with the goodwill of the business symbolized by the mark and any rights of registration thereof.

A-Live Foods, Inc.

By: Nathaniel B. LeBaron

Name: Nathaniel B. LeBaron

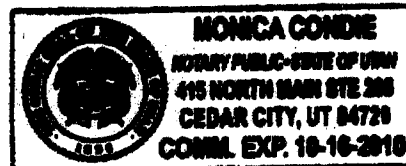
executive
Title: Vice President

Date: Nov 29 2007

Subscribed and sworn to before me this 19th day of November, 2007

[SEAL]

Notary Public: Monica Condie

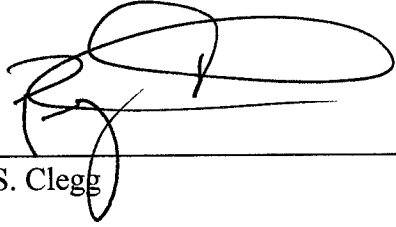


My commission expires on: 10-16-2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing MOTION TO SUBSTITUTE, Exhibit A thereto, and this CERTIFICATE OF SERVICE were served on Respondent by mailing a true copy thereof to its attorney of record, by First Class Mail, postage prepaid this 21st day of November, 2007, in an envelope addressed as follows:

Robyn L. Phillips
Matthew A. Barlow
WORKMAN | NYDEGGER
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111



Perry S. Clegg