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Filing date: **10/08/2008**

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    | Nature's Way Products, Inc.   |             |      |
| Entity  | Corporation   | Citizenship | Utah |
| Address | 1375 North Mountain Springs Parkway<br>Springville, UT 84663<br>UNITED STATES |             |      |

|                      |   |
|----------------------|---|
| Attorney information | Robyn L. Phillips<br>WORKMAN NYDEGGER<br>60 East South Temple, Ste. 1000<br>Salt Lake City, UT 84111<br>UNITED STATES<br>rphillips@wnlaw.com Phone:801-533-9800 |
|----------------------|---|

### Registration Subject to Cancellation

|                                |   |                                 |            |
|--------------------------------|---|---------------------------------|------------|
| Registration No                | 3194667   | Registration date               | 01/02/2007 |
| International Registration No. | NONE  | International Registration Date | NONE       |
| Registrant                     | COSMO TECHNOLOGIES LIMITED<br>2 Duncairn Terrace<br>Bray, Co. Wicklow,<br>IRELAND |                                 |            |

### Goods/Services Subject to Cancellation

|   |
|---|
| <p>Class 005.<br/>All goods and services in the class are cancelled, namely: Pharmaceutical preparations, namely tablets, capsules, sugar-coated pills, granules, powders, and suppositories, namely anti-inflammatories, anti-infectives, antacids, anti-flatulants, and anti-parasitics; pharmaceutical and veterinary preparations for use in gastroenterology, for the prevention and treatment of diarrhea, for colon and digestive system health and regulation, for improving energy levels, and for maintaining and improving mucous levels and the mucosal lining of the intestines and colon; sanitary preparations for medical purposes, namely, nutraceutical preparations for colon and digestive system health and regulation, for maintenance and improvement of energy levels, and for maintaining and improving mucous levels and the mucosal lining of the intestines and colon; dietetic foods and beverages adapted for medical use, namely probiotic food and beverages for colon and digestive system health and regulation, for maintenance and improvement of energy levels, for maintaining and improving mucous level and the mucosal lining of the intestines and colon; animal feed supplements and medicated animal feed</p> |
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### Grounds for Cancellation

|             |                          |
|-------------|--------------------------|
| Abandonment | Trademark Act section 14 |
|-------------|--------------------------|

|             |   |
|-------------|---|
| Attachments | NW Petition for Cancellation.pdf ( 5 pages )(161709 bytes ) |
|-------------|---|

### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

|           |                     |
|-----------|---------------------|
| Signature | /Robyn L. Phillips/ |
| Name      | Robyn L. Phillips   |
| Date      | 10/08/2008          |

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

In the matter of Trademark Registration No. 3,194,667  
Registration Date: January 2, 2007  
Mark: ZACOL NMX with design  
International Class: 005

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|                                     |   |                                  |
|-------------------------------------|---|----------------------------------|
| <b>NATURE’S WAY PRODUCTS, INC.,</b> | ) | Cancellation No. _____           |
|                                     | ) |                                  |
| Petitioner,                         | ) |                                  |
|                                     | ) | <b>PETITION FOR CANCELLATION</b> |
| v.                                  | ) |                                  |
|                                     | ) |                                  |
| <b>COSMO TECHNOLOGIES, LTD.,</b>    | ) |                                  |
|                                     | ) |                                  |
| Registrant.                         | ) |                                  |

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Petitioner, Nature’s Way Products, Inc., a Utah corporation (“Petitioner”), believes that it is and will continue to be damaged by the continued registration of the mark “ZACOL NMX with design” Registration No. 3,194,667, and hereby petitions the Trademark Trial and Appeal Board for cancellation of the same.

The grounds for the petition are as follows:

1. Upon information and belief, Registrant, Cosmo Technologies Limited (“Registrant”), a limited liability company of Ireland having an address of 2 Duncairn Terrace Bray, Co. Wicklow, Ireland, has registered the mark “ZACOL NMX with design” as a trademark to be used in connection with “Pharmaceutical preparations” in International Class 005.

**PETITION FOR  
CANCELLATION**

Registrant filed United States Trademark Application Serial No. 79/021,497 for registration of the mark “ZACOL NMX with design” on September 28, 2005, which application matured into United States Registration No. 3,194,667 with an issue date of January 2, 2007.

2. The records of the United States Patent and Trademark Office list the attorney of Record for Registrant as Joerg-Uwe Szipl at the law firm Griffin & Szipl, PC in Arlington, Virginia.

3. Petitioner is the holder of all right, title, and interest, including common law rights, and associated goodwill, in and to the marks “ZUCOL” and “ZUCOL COLDCARE,” as identified in United States Trademark Application Serial Nos. 77/101,647 and 77/010,666, respectively, for goods identified as “vitamins, mineral supplements, dietary supplements and pharmaceuticals for the treatment of colds and other diseases of the respiratory tract” in International Class 005.

4. Petitioner has been denied registration of its marks “ZUCOL” and “ZUCOL COLDCARE”, Serial Nos. 77/101,647 and 77/010,666, respectively, because of an alleged likelihood of confusion under Section 2(d), 15 U.S.C. § 1052(d) with Registrant’s mark “ZACOL NMX with design”.

5. Petitioner has used its marks “ZUCOL” and “ZUCOL COLDCARE” to distinguish its goods from all other goods of the same type, and Petitioner has built up substantial goodwill in its marks through use thereof.

6. Petitioner has used its marks “ZUCOL” and “ZUCOL COLDCARE” since at least September 29, 2006, as a trademark to identify its products.

7. Petitioner’s “ZUCOL” and “ZUCOL COLDCARE” marks have, at least, acquired secondary meaning to the public indicating Petitioner as the source of “vitamins, mineral

supplements, dietary supplements and pharmaceuticals for the treatment of colds and other diseases of the respiratory tract,” bearing Petitioner’s marks “ZUCOL” and “ZUCOL COLDCARE”, with the result that Petitioner’s customers and the general public recognize Petitioner’s marks “ZUCOL” and “ZUCOL COLDCARE”, and the public associates said marks with Petitioner and/or its goods.

8. Petitioner’s “ZUCOL” and “ZUCOL COLDCARE” marks are distinctive and serve as a designation of origin with respect to the goods offered by Petitioner.

9. Upon information and belief, Registrant has never used its mark “ZACOL NMX with design” on goods sold in commerce in the United States.

10. Upon information and belief, Registrant has failed to use its mark “ZACOL NMX with design” in commerce in the United States for a period of over three years.

11. Accordingly, upon information and belief, Registrant has abandoned any and all rights in its “ZACOL NMX with design” mark in the United States through non-use in interstate commerce for at least the last three years.

12. The continued registration of Registrant’s mark will result in damage to Petitioner’s marks and Petitioner’s business.

13. Pursuant 15 U.S.C. § 1064, Registration No. 3,194,667 for the mark “ZACOL NMX with design” should be cancelled.

WHEREFORE, Petitioner prays that Registration No. 3,194,667 for the mark “ZACOL NMX with design” obtained by Registrant be cancelled and that this Petition be granted.

The fee required under 37 C.F.R. § 2.6(16) is enclosed.

DATED this 8<sup>th</sup> day of October, 2008.

By: /Robyn L. Phillips/  
Robyn L. Phillips, Reg. No. 39,330

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60 East South Temple  
Salt Lake City, Utah 84111  
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Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing **PETITION FOR CANCELLATION** was served on Registrant by mailing a true copy thereof to its attorney of record, by First Class Mail, postage prepaid this 8<sup>th</sup> day of October, 2008, in an envelope addressed as follows:

Joerg-Uwe Szipl  
Griffin & Szipl, PC  
Suite PH-1  
2300 9th Street South  
Arlington, Virginia 22204

\_\_\_\_\_/Robyn L. Phillips/\_\_\_\_\_  
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