

ESTTA Tracking number: **ESTTA258124**

Filing date: **12/31/2008**

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 One, Inc.		
Entity	Corporation	Citizenship	Ohio
Address	8754 Cotter Street Lewis Center, OH 43035 UNITED STATES		

Attorney information	Cheryl S. Scotney Standley Law Group LLP 6300 Riverside Drive Dublin, OH 43017 UNITED STATES cscotney@standleyllp.com, cstovsky@standleyllp.com, trademarks@standleyllp.com Phone:614-792-5555		
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Registration Subject to Cancellation

Registration No	3118082	Registration date	07/18/2006
Registrant	Surabian, Adena 295 Knoll Road Simi Valley, CA 93065 UNITED STATES		

Goods/Services Subject to Cancellation

Class 003. First Use: 2002/04/25 First Use In Commerce: 2002/04/25 All goods and services in the class are cancelled, namely: Organic shampoos, conditioners, soaps for body care, laundry detergent, non-medicated diaper rash ointments and massage oils, all for use with babies and children, and baby product dishwashing soap
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Related Proceedings	Trademark Opposition No. 91185583; U.S. District Court, Southern District of Ohio, Eastern Division, Nature's One, Inc. v. Nature's Baby Products, Inc.- Case No. 2:08 CV 543
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2504996	Application Date	11/03/1998
Registration Date	11/06/2001	Foreign Priority Date	NONE
Word Mark	NATURE'S ONE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01 Baby Food

U.S. Registration No.	2563813	Application Date	11/21/2000
Registration Date	04/23/2002	Foreign Priority Date	NONE
Word Mark	BABY'S ONLY ORGANIC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2000/10/31 First Use In Commerce: 2000/10/31 Organic baby food		

Attachments	Petition for Cancellation.pdf (7 pages)(191260 bytes)
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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	/Cheryl S. Scotney/
Name	Cheryl S. Scotney
Date	12/31/2008

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

In the Matter of Registration No.: 3118082

Mark: NATURE'S BABY

Registration Date: July 18, 2006

Nature's One, Inc.
Petitioner,

v.

CANCELLATION NO. _____

Surabian, Adena
Defendant.

PETITION FOR CANCELLATION

Nature's One, Inc. ("Petitioner"), an Ohio corporation, having its principal place of business at 8754 Cotter Street, Lewis Center, Ohio 43035, believes that it is being damaged by the registration of the mark shown in U.S. Registration No.3118082 ("the '082 registration"), and hereby petitions to cancel the same. As grounds for cancellation, Petitioner alleges:

PETITIONER'S TRADEMARK RIGHTS

The '996 Registration

1. Petitioner filed US Trademark Application Ser. No. 75/582303 ("the '303 application") on November 3, 1998, to register the mark NATURE'S ONE in International Class 5 for "baby food."
2. The '303 application was filed based on intent to use the mark in commerce and was used in commerce in association with the goods at least as early as April 1, 1999.
3. The United States Trademark Office duly registered the '303 application as US Trademark Registration No. 2,504,996 ("the '996 registration") on November 6, 2001.

4. The '996 registration has incontestable status, is in good standing, and is owned by Petitioner, as evidenced by the attached copy thereof.

The '813 Registration

5. Petitioner filed US Trademark Application Ser. No. 78/036180 ("the '180 application") on November 21, 2000, to register the mark BABY'S ONLY ORGANIC in International Class 5 for "organic baby food."

6. The '180 application was based on use in commerce in association with the goods with stated first use at least as early as October 31, 2000.

7. The United States Trademark Office duly registered the '180 application as US Trademark Registration No. 2,563,813 ("the '813 registration") on April 23, 2002.

8. The '813 registration is in good standing and is owned by Petitioner, as evidenced by the attached copy thereof.

9. The marks represented by the '996 registration and the '813 registration both individually and collectively (referred to collectively as "Petitioner's registrations" or "Petitioner's marks") have been in continuous use in commerce. By virtue of the registrations and use, Petitioner has established valuable goodwill in Petitioner's marks. The public has come to associate the marks with Petitioner and to know Petitioner's marks as a source indicator for numerous products emanating from Petitioner.

DEFENDANT

10. On information and belief, Adena Surabian ("Defendant") is an individual, having a principal place of business at 295 Knoll Road, Simi Valley, California 93065.

11. On information and belief, Defendant's predecessor in interest, Safe and Secure Baby, Inc., filed application serial no. 78/420694 ("the '694 application") on May 18, 2004 for the mark NATURE'S BABY. The '694 application was based upon a stated first use date of April 25, 2002 in International Class 3 for use in association with "organic shampoos,

conditioners, soaps for body care, laundry detergent, non-medicated diaper rash ointments and massage oils, all for use with babies and children, and baby product dishwashing soap.”

12. The ‘694 application was assigned by Safe and Secure Baby, Inc. to Adena Surabian on September 15, 2005.

13. The ‘694 application issued as U.S. Registration No. 3118082 on July 18, 2006.

Likelihood of Confusion

14. The mark represented by the ‘082 registration and the marks represented by the Petitioner’s registrations are similar in appearance, sound, connotation, commercial impression, goods and channels of trade.

15. The marks represented by Petitioner’s registrations were in use in commerce long before the Defendant’s filing date of May 18, 2004.

16. Defendant has neither sought, nor has the Petitioner given, any consent as to Defendant’s proposed use of the mark represented by the ‘082 registration.

17. The extent of potential confusion is substantial if the Defendant is permitted to continue using the mark represented by the ‘082 registration.

Conclusion

18. Use of the mark in the ‘082 registration which is substantially similar to Defendant’s mark is likely to cause confusion, or to cause mistake, or to deceive, particularly as to the source or origin of the goods with which Defendant uses its mark, to induce purchasers to believe that the goods of Defendant are those of Petitioner, or are endorsed by, or are in some way affiliated or associated with Petitioner.

19. Use of the mark in ‘082 registration presumptively entitles Defendant to prima facie exclusive ownership and rights to the mark represented by the ‘082 registration and could cause a likelihood of confusion among consumers of the relevant goods as to the source of the goods.

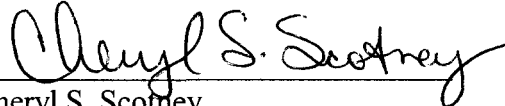
WHEREFORE, Petitioner prays that this Cancellation be sustained and that Defendant's registration for "NATURE'S BABY" be cancelled.

The Commissioner is also authorized to charge any fees which may be required to Deposit Account 19-4076.

Respectfully submitted,

NATURE'S ONE, INC.

Date: 12/31/08

By: 

Cheryl S. Scotney
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Atty. Docket No. NAT1425-023

Certificate of Service

I hereby certify that a copy of the foregoing Notice of Opposition has been served upon Mark A. Goldstein, counsel for Adena Surabian on December 31, 2008 in the manner indicated.

Via First Class U.S. Mail

Mark A. Goldstein
SoCal IP Law Group LLP
310 N. Westlake Boulevard, Suite 120
Westlake Village, California 91362



Cheryl S. Scotney
Attorney for Petitioner, Nature's One, Inc.

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

United States Patent and Trademark Office

Reg. No. 2,504,996

Registered Nov. 6, 2001

**TRADEMARK
PRINCIPAL REGISTER**

NATURE'S ONE

NATURE'S ONE, INC. (OHIO CORPORATION)
445 MEACHAM RUN
SUITE 1001
WESTERVILLE, OH 43081

FIRST USE 4-1-1999; IN COMMERCE 4-1-1999.

SN 75-582,303, FILED 11-3-1998.

FOR: BABY FOOD, IN CLASS 5 (U.S. CLS. 6, 18, 44,
46, 51 AND 52).

GLENN CLARK, EXAMINING ATTORNEY

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

Reg. No. 2,563,813

United States Patent and Trademark Office

Registered Apr. 23, 2002

**TRADEMARK
PRINCIPAL REGISTER**

BABY'S ONLY ORGANIC

NATURE'S ONE, INC. (OHIO CORPORATION)
12 WESTERVILLE SQUARE
SUITE 308
WESTERVILLE, OH 43081

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "BABY'S" AND "ORGANIC",
APART FROM THE MARK AS SHOWN.

FOR: ORGANIC BABY FOOD, IN CLASS 5 (U.S.
CLS. 6, 18, 44, 46, 51 AND 52).

SER. NO. 78-036,180, FILED 11-21-2000.

FIRST USE 10-31-2000; IN COMMERCE 10-31-2000.

ROBIN CHOSID, EXAMINING ATTORNEY