

ESTTA Tracking number: **ESTTA798051**

Filing date: **01/30/2017**

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	Purina Animal Nutrition, LLC		
Entity	limited liability company	Citizenship	Delaware
Address	1080 County Road F West Shoreview, MN 55126 UNITED STATES		

Attorney information	Jodi A. DeSchane Faegre Baker Daniels LLP 90 South Seventh Street 2200 Wells Fargo Center Minneapolis, MN 55402 UNITED STATES tmmpls@faegrebd.com, jodi.deschane@faegrebd.com Phone:612.766.7000		
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Registration Subject to Cancellation

Registration No	3363446	Registration date	01/01/2008
Registrant	ASPEN VETERINARY RESOURCES, LTD. 822 7TH STREET GREELEY, CO 80631 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2007/05/29 First Use In Commerce: 2007/05/29
All goods and services in the class are cancelled, namely: Fly repellent spray for horses

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	Petition for Cancellation.pdf(22469 bytes)
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Signature	/Jodi A DeSchane/
Name	Jodi A. DeSchane
Date	01/30/2017

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

In the matter of Registration No. 3,363,446
Mark: OUTLAST
Registration Date: January 1, 2008

Purina Animal Nutrition, LLC Petitioner, v. Aspen Veterinary Resources, LTD. Respondent.	Cancellation No. _____ <u>PETITION FOR CANCELLATION</u>
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Petitioner Purina Animal Nutrition, LLC is a Delaware limited liability company having its principal place of business at 1080 County Road F West, Shoreview, MN 55126 (hereinafter “Petitioner”). Petitioner believes it is and will be damaged by Registration No. 3,363,446 for the mark OUTLAST, currently owned by Aspen Veterinary Resources, LTD., a limited liability company having a place of business at 822 7th Street Suite 740, Greeley, Colorado 80631 (hereinafter “Respondent”). The grounds for cancellation are as follows:

1. Petitioner is in the animal nutrition business. It provides feed products, animal nutrition training and consulting services, and related goods, services and expertise throughout the United States.

2. On October 4, 2016, Petitioner filed Trademark Application Serial No. 87/192,095 for the mark OUTLAST for use in connection with “Animal feed additive for use as

a nutritional supplement for medical purposes; Non-medicated additives for animal feed for use as nutritional supplements” in International Class 5.

3. Respondent owns Registration No. 3,363,466 for the mark OUTLAST for “fly repellent spray for horses” in International Class 5 (herein after “the ‘466 Registration”).

4. The ‘466 Registration was initially issued on January 1, 2008, to Walco International, Inc., 7 Village Circle, Suite 200, Westlake, Texas 76262. According to the United States Patent and Trademark Office’s Assignment database, Walco International, Inc. assigned the registration to Aspen Veterinary Resources, LTD., a Colorado limited liability company located at 822 7th Street, Suite 740, Greeley, Colorado 80631 on December 30, 2012.

5. On January 12, 2017, Petitioner’s Application Serial No. 87/192,095 was refused by the United States Patent and Trademark Office citing a likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), with the ‘466 Registration.

6. Upon information and belief, Respondent has abandoned the OUTLAST mark in the ‘466 Registration pursuant to Section 14(3) of the Trademark Act, 15 U.S.C. §1064(3).

7. Upon information and belief, Respondent is not currently using the OUTLAST mark shown in the ‘466 Registration in connection with “fly repellent spray for horses.”

8. Upon information and belief, Respondent discontinued use of the OUTLAST mark as shown in the ‘446 Registration in connection with “fly repellent spray for horses” several years ago.

9. Upon information and belief, Respondent does not intend to resume use of the OUTLAST mark as shown in the ‘466 Registration.

10. In view of Respondent’s non-use and abandonment of the OUTLAST mark shown in the ‘466 Registration, Respondent is not entitled to continued registration of the mark

pursuant to Section 14(3) of the Trademark Act, 15 U.S.C. SS 1064(3), and, as such, the '466 Registration should be cancelled.

11. Petitioner's ability to register the OUTLAST mark as shown in Petitioner's Application has been impaired by the continued registration of Respondent's abandoned mark. Petitioner is thereby being damaged by said registration.

WHEREFORE, Petitioner, through its attorneys, prays that U.S. Registration No. 3,363,446 be canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

The requisite filing fee of \$400 is submitted herewith. If the amount submitted is determined to be incorrect, the Commissioner may charge any additional fees or to credit any over payment to Deposit Account No. 06-0029.

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Dated: January 30, 2017

FAEGRE BAKER DANIELS LLP

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