

ESTTA Tracking number: **ESTTA1254254**

Filing date: **12/15/2022**

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 has filed a petition to cancel the registration indicated below.

Petitioner information

Name	JH BIOTECH, INC.		
Entity	Corporation	Citizenship	Delaware
Address	4951 OLIVAS PARK DRIVE VENTURA, CA 93003 UNITED STATES		

Correspondence information	RALPH D CHABOT ATTORNEY LAW OFFICE OF RALPH D. CHABOT 2310 E. PONDEROSA DR., STE 4 CAMARILLO, CA 93010-4747 UNITED STATES Primary email: rdc@chabotlaw.com 8053885028
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Registration subject to cancellation

Registration no.	4170324	Registration date	07/10/2012
Register	Principal		
Registrant	Nutri Best 1230 SANTA ANITA AVE., #E SOUTH EL MONTE, CA 91733 UNITED STATES		

Goods/services subject to cancellation

Class 005. First Use: May 19, 2011 First Use In Commerce: May 19, 2011 All goods and services in the class are subject to cancellation, namely: Dietary and nutritional supplements
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Grounds for cancellation

Abandonment	Trademark Act Section 14(3)
Deceptiveness	Trademark Act Sections 14(3) and 2(a)
Mark never used in commerce	Trademark Act Section 14(6)
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used	Trademark Act Section 14(3)

Mark cited by petitioner as basis for cancellation

U.S. application no.	97097283	Application date	10/28/2021
Register	Principal		
Registration date	NONE	Foreign priority date	NONE
Word mark	NUTRA-AID		
Design mark			
Description of mark	NONE		
Goods/services	Class 005. First use: First Use: Mar 18, 2020 First Use In Commerce: Mar 18, 2020 Non-medicated additives for animal feed for use as nutritional supplements		

Attachments	01 Petition to Cancel.pdf(125122 bytes)
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Signature	/rdc/
Name	Ralph D Chabot
Date	12/15/2022

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

In the Matter of:

Mark: NUTRI AID THE BEST FOR YOU
Registration No. 4,170,324
Date of Issue: April 24, 2012

JH BIOTECH, INC.,)	
)	
Petitioner,)	
v.)	Cancellation No. _____
)	
NUTRIBEST LLC,)	
)	
Registrant.)	
)	

PETITION FOR CANCELLATION

JH BIOTECH, INC. (“Petitioner”) is a corporation organized and existing under the laws of the State of Delaware, with an address of 4951 Olivas Park Drive, Ventura, California 93003 and believes that it will be damaged by Registration No. 4170324 for the mark **NUTRI AID THE BEST FOR YOU**, and hereby petitions to cancel same.

As grounds for the Petition for Cancellation it is alleged as follows:

1. Upon information and belief, NutriBest LLC (“Registrant”) is the record owner of Registration No. 4170324 for the mark **NUTRI AID THE BEST FOR YOU** (“Registrant’s Mark”) for “Dietary and nutritional supplements” in International Class 005 (“Registrant’s Goods”).
2. Upon information and belief, Registrant was issued Registrant’s Mark on April 24, 2012.

3. Registrant is listed on Reg. No. 4170324 as being a California limited liability company.

4. Upon information and belief, Registrant, NutriBest LLC, is not a limited liability company registered with the State of California.

5. NutriBest LLC is not listed at the California Secretary of State website (<https://bizfileonline.sos.ca.gov/search/business>).

6. NutriBest LLC does not have an active status at the California Secretary of State website (<https://bizfileonline.sos.ca.gov/search/business>).

7. Upon information and belief, Registrant does not have an active status to do business in any State of the United States.

8. Petitioner filed an actual-use application for the mark **NUTRA-AID** on October 28, 2021, Serial No. 97/097,283 (“the **NUTRA-AID** application”) for the following goods in International Class 005: “Non-medicated additives for animal feed for use as nutritional supplements”.

9. On August 8, 2022, the USPTO examiner responsible for the **NUTRA-AID** application cited Registrant’s Mark to refuse registration on the ground of likelihood of confusion. On this basis, Petitioner has standing to file this Petition.

10. Petitioner continues to use **NUTRA-AID** as a common law trademark for sale of non-medicated additives for animal feed for use as nutritional supplements to livestock producers.

11. Upon information and belief, Registrant has never used Registrant’s Mark in commerce because the business entity does not exist.

12. Because Registrant is not a legal entity, it does not have the capacity to have ever sold the products described in Registrant’s Mark.

13. Because Registrant is not a legal entity, Registrant's Mark has become abandoned thru more than three years of non-use.

14. Upon information and belief, Registrant's Mark has not been used to sell goods to livestock producers.

15. Petitioner seeks to cancel Registrant's Mark (Reg. No. 4170324) because Registrant does not legally exist and does not have legal capacity to respond to this proceeding.

16. In the alternative, should Registrant have legal capacity to participate in this proceeding and Registrant's Mark has not abandoned and has been used in commerce, Petitioner seeks a partial cancellation of Registrant's Mark by restricting Registrant's Goods under Section 18 of the Lanham Act. The proposed restriction amends the goods description to the following: "Dietary and nutritional supplements for human use" or other restriction acceptable to the Board. (underlined portion is proposed to be added).

17. If the proposed restriction is granted, the refusal based on likelihood of confusion is likely to be withdrawn and the **NUTRA-AID** application will be allowed to proceed toward registration. Registrant's Mark will continue to describe products for its intended customer base and both **NUTRI AID THE BEST FOR YOU** and **NUTRA-AID** will coexist in different channels of trade and to different customers. "[I]f the goods in question are not marketed in a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely. TMEP §1207.01(a)(i) citing *Shen Manufacturing Co., v. Ritz. Hotel Ltd.*, 73 USPQ2d 1350 (Fed. Cir. 2004).

WHEREFORE, Petitioner prays that Registration No. 4170324 be cancelled or, in the alternative, that Reg. No. 4170324 be partially cancelled as set forth herein.

Respectfully submitted,

Date: December 15, 2022

/s/ Ralph D. Chabot

Ralph D. Chabot

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