

ESTTA Tracking number: **ESTTA901409**

Filing date: **06/06/2018**

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	Bayer HealthCare LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	100 Bayer Road Pittsburgh, PA 15205 UNITED STATES		

Attorney information	Phillip Barengolts Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP 200 South Wacker Drive, Suite 2900 Chicago, IL 60606 UNITED STATES Email: pb@pattishall.com, jae@pattishall.com, jrp@pattishall.com, docket@pattishall.com Phone: (312) 554-8000
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**Registration Subject to Cancellation**

Registration No.	5440107	Registration date	04/03/2018
Registrant	Alivio Products, Inc. 5218 County Road 421 La Veta, CO 81055 UNITED STATES		

**Goods/Services Subject to Cancellation**


Class 005. First Use: 2017/12/01 First Use In Commerce: 2017/12/01 All goods and services in the class are subject to cancellation, namely: Analgesic and muscle relaxant pharmaceutical preparations; Aromatherapy creams for nausea, insomnia, anxiety, pain relief, and inflammation; Gels, creams and solutions for dermatological use; Homeopathic anti-inflammatory ointment; Medicated skin care preparations; Medicated skin care preparations, namely, creams, lotions, gels, toners, cleaners and peels; Medicinal creams for skin care; Topical analgesic creams; Topical gel for medical and therapeutic treatment of nausea, insomnia, anxiety, pain relief, and inflammation; Transdermal patches for use in the treatment of nausea, insomnia, anxiety, pain relief, and inflammation; Anti-inflammatory and antipyretic preparations; Multipurpose medicated antibiotic cream, analgesic balm and mentholated salve; Preparation for the relief of pain
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Dilution by blurring	Trademark Act Sections 14(1) and 43(c)


**Marks Cited by Petitioner as Basis for Cancellation**


U.S. Registration No.	1536042	Application Date	05/05/1988
Registration Date	04/25/1989	Foreign Priority Date	NONE
Word Mark	ALEVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1988/04/25 First Use In Commerce: 1988/04/25 ANTI-INFLAMMATORY, ANALGESIC, AND ANTIPYRETIC PHARMACEUTICAL PREPARATIONS		

U.S. Registration No.	3287780	Application Date	02/13/2007
Registration Date	09/04/2007	Foreign Priority Date	NONE
Word Mark	ALEVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2000/07/31 First Use In Commerce: 2000/07/31 Pharmaceutical antitussive-cold preparations; Preparations for treating colds		

U.S. Registration No.	3719030	Application Date	05/25/2007
Registration Date	12/01/2009	Foreign Priority Date	NONE
Word Mark	ALEVE-D		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2007/07/20 First Use In Commerce: 2007/07/20		

	Antitussive-cold preparations; preparations for treating colds		
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U.S. Registration No.	4459303	Application Date	07/24/2013
Registration Date	12/31/2013	Foreign Priority Date	NONE
Word Mark	ALEVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2010/08/27 First Use In Commerce: 2010/08/27 healthcare information services on painrelief, namely providing an online resource of information on joint, muscle andback pain, headache pain and osteoarthritis, including treatment options and tips		

U.S. Registration No.	5279528	Application Date	08/08/2016
Registration Date	09/05/2017	Foreign Priority Date	NONE
Word Mark	ALEVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2016/06/24 First Use In Commerce: 2016/06/24 Electrical stimulation apparatus for nerves for therapeutic purposes		

Attachments	77105868#TMSN.png( bytes ) 77190305#TMSN.png( bytes ) 86018399#TMSN.png( bytes ) 87130338#TMSN.png( bytes ) Petition to Cancel ALIVIO - Reg. No. 5440107.pdf(295212 bytes )
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Signature	/Jacquelyn R. Prom/
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Name	Jacquelyn R. Prom
Date	06/06/2018

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Registration No. 5,440,107: ALIVIO

BAYER HEALTHCARE LLC,	)	
	)	
Petitioner,	)	Cancellation No. _____
	)	
v.	)	
	)	
ALIVIO PRODUCTS, INC.	)	
	)	
Registrant.	)	

**PETITION TO CANCEL**

Bayer HealthCare LLC, a Delaware limited liability company having offices in Pittsburgh, Pennsylvania, believes it is and will continue to be damaged by the mark shown in Registration No. 5,440,107 (the “Registration”) for the mark ALIVIO and hereby petitions to cancel the same. The grounds for cancellation are stated below.

1. Petitioner and its predecessors have for many years been engaged in the manufacture, distribution, advertising and sale of products in the medical and healthcare fields, including products for the treatment of pain, inflammation, fever, and colds.
2. Since long prior to the filing date of the Registration, Petitioner and its predecessors have continuously used the trademark ALEVE in commerce throughout the United States in connection with the advertising, promotion and sale of products for the treatment of pain, inflammation, fever, and colds.
3. Petitioner owns the trademark registrations shown below, all comprised of its ALEVE trademark.

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