

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79153491
LAW OFFICE ASSIGNED	LAW OFFICE 108
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/79153491/large
LITERAL ELEMENT	ENZY CARBOFLEX
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	
Please see the actual argument text attached within the Evidence section.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_2439255210-20151026152434913727_.ENZY_CARBOFLEX_3073970_-_Request_for_Reconsideration.pdf
CONVERTED PDF FILE(S) (5 pages)	\\TICRS\EXPORT16\IMAGEOUT16\791\534\79153491\xml16\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\791\534\79153491\xml16\RFR0003.JPG
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ORIGINAL PDF FILE	evi_2439255210-20151026152434913727_.NASDAQ_printout.pdf

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DESCRIPTION OF EVIDENCE FILE	arguments; NASDAQ printout
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	031
DESCRIPTION	additives to fodder, not for medical purposes
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	031
TRACKED TEXT DESCRIPTION	
additives to fodder, not for medical purposes ; additives to fodder, not for medical purposes, namely enzyme preparations for veterinary use for increasing the degradation of anti-nutritive substances	
FINAL DESCRIPTION	
additives to fodder, not for medical purposes, namely enzyme preparations for veterinary use for increasing the degradation of anti-nutritive substances	
CORRESPONDENCE SECTION	
ORIGINAL ADDRESS	Elizabeth A. Cominoli Hiscock & Barclay, LLP One Park Place, 300 South State Street Syracuse New York (NY) US

	13202
NEW CORRESPONDENCE SECTION	
NAME	Elizabeth A. Cominolli
FIRM NAME	Barclay Damon, LLP
DOCKET/REFERENCE NUMBER	3073970
INTERNAL ADDRESS	One Park Place
STREET	300 South State Street
CITY	Syracuse
STATE	New York
ZIP/POSTAL CODE	13202
COUNTRY	United States
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FAX	315-425-2701
EMAIL	ip@barclaydamon.com
AUTHORIZED EMAIL COMMUNICATION	Yes
SIGNATURE SECTION	
RESPONSE SIGNATURE	/EAC/
SIGNATORY'S NAME	Elizabeth A. Cominolli
SIGNATORY'S POSITION	Attorney of Record, New York Bar Member
SIGNATORY'S PHONE NUMBER	315-425-2786
DATE SIGNED	10/26/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Oct 26 15:33:22 EDT 2015
TEAS STAMP	USPTO/RFR-24.39.255.210-2 0151026153322284492-79153 491-5407863cd4311234deac1

a152eef5114f693ca4d4992aa
441d4bb4cd4c78ab1047-N/A-
N/A-20151026152434913727

PTO Form 1960 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 07/31/2017)

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **79153491** ENZY CARBOFLEX(Standard Characters, see <http://tmngal.uspto.gov/resting2/api/img/79153491/large>) has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Please see the actual argument text attached within the Evidence section.

EVIDENCE

Evidence in the nature of arguments; NASDAQ printout has been attached.

Original PDF file:

[evi_2439255210-20151026152434913727_.ENZY_CARBOFLEX_3073970_-_Request_for_Reconsideration.pdf](#)

Converted PDF file(s) (5 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

Original PDF file:

[evi_2439255210-20151026152434913727_.NASDAQ_printout.pdf](#)

Converted PDF file(s) (12 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

[Evidence-11](#)

[Evidence-12](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 031 for additives to fodder, not for medical purposes

Original Filing Basis:

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

Proposed:

Tracked Text Description: ~~additives to fodder, not for medical purposes~~; [additives to fodder, not for medical purposes, namely enzyme preparations for veterinary use for increasing the degradation of anti-nutritive substances](#)

Class 031 for additives to fodder, not for medical purposes, namely enzyme preparations for veterinary use for increasing the degradation of anti-nutritive substances

Filing Basis Section 66(a) , Request for Extension of Protection to the United States. Section 66(a) of the Trademark Act, 15 U.S.C. §1141f.

CORRESPONDENCE ADDRESS CHANGE

Applicant proposes to amend the following:

Current:

Elizabeth A. Cominoli
Hiscock & Barclay, LLP
One Park Place, 300 South State Street
Syracuse
New York (NY)
US
13202

Proposed:

Elizabeth A. Cominoli of Barclay Damon, LLP, having an address of
One Park Place 300 South State Street Syracuse, New York 13202
United States
ip@barclaydamon.com
315-425-2700
315-425-2701
The docket/reference number is 3073970 .

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /EAC/ Date: 10/26/2015

Signatory's Name: Elizabeth A. Cominoli

Signatory's Position: Attorney of Record, New York Bar Member

Signatory's Phone Number: 315-425-2786

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the

highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

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300 South State Street
Syracuse, New York 13202

Serial Number: 79153491
Internet Transmission Date: Mon Oct 26 15:33:22 EDT 2015
TEAS Stamp: USPTO/RFR-24.39.255.210-2015102615332228
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-N/A-N/A-20151026152434913727

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK EXAMINING OPERATION

Atty. Ref.: 3073970

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In re Application of :
 :
Lohmann Animal Nutrition GmbH : Law Office: 108
 :
Serial No.: 79/153,491 : Exam. Atty: Juhi Kaveeshvar Patel
 :
Filed: June 27, 2014 :
 :
Mark: ENZY CARBOFLEX :
----- :

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

RESPONSE TO OFFICE ACTION

Responding to the final Office Action mailed April 24, 2015:

I. Identification of Goods

Please amend the identification of goods to read as follows:

Class 31: additives to fodder, not for medical purposes, *namely enzyme preparations for veterinary use for increasing the degradation of anti-nutritive substances*

II. Section 2(d) Refusal – Likelihood of Confusion

The Examining Attorney has maintained her citation of U.S. Reg. No. 3,485,887, for “ENZYFLEX” (hereinafter the “Cited Mark” or “Cited Registration”), as a bar to registration of Applicant’s trademark “ENZY CARBOFLEX.” For the following reasons, Applicant respectfully requests that the Examining Attorney reconsider and withdraw the aforementioned citation.

Differences in the Goods & Channels of Trade

In the final Action, Examining Attorney stated that Applicant’s goods, broadly identified as “additives to fodder, not for medical purposes” encompasses the Registrant’s more narrow

identification, namely: “vitamins, mineral supplemental, nutritional and dietary supplements.” Through this Response, Applicant has now restricted its identification of goods to “additives to fodder, not for medical purposes, namely enzyme preparations for veterinary use for increasing the degradation of anti-nutritive substances.”

Additives to fodder are regulated and approved at the Federal level by the U.S. Food and Drug Administration (the “FDA”). Applicant’s intended goods, as amended herein, are non-medical additives to fodder in the form of enzyme preparations, which enzyme preparations are restricted for veterinary use *only*. In fact, Applicant’s product is not authorized by the FDA for incorporation into products intended for human consumption. Applicant’s products, including the products intended to be marketed under the applied-for mark, are highly regulated goods that require testing and approval from the FDA, are restricted for veterinary use and sold to the compound *animal* feed industry.

The Registrant, Triarco Industries, Inc., on the other hand, is a “supplier of high-quality, high-purity natural product ingredients in ‘ready-to-run’ form to nutritional supplement manufacturers.” (see attached printout from NASDAQ). Specifically, the Registrant sells its natural product ingredients through three major distribution channels, namely, multi-level marketers, specialty health products retailers, and mass market retailers. The Registrant’s main customers are GNC, Global Health, Pharmavite (manufacturer of Nature Made and Nature’s Resource vitamin and supplement products), and Rexall Sundown. (see NASDAQ printout). Notably, Triarco’s customers all manufacture or otherwise sell supplement products for *human* use and consumption.

“[I]f the goods or services in question are not related or marketed in such 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); *See, e.g., Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668, 1669 (TTAB 1986) (holding QR for coaxial cable and QR for various apparatus used in connection with photocopying, drafting, and blueprint machines not likely to cause confusion because of the differences between the parties’ respective goods in terms of their nature and purpose, how they are promoted, and who they are purchased by).

Applicant respectfully requests that the refusal of registration be withdrawn in light of Applicant’s restriction and clarification of its identification of goods and differences in the respective industries into which Applicant and Registrant’s products are sold.

Sophistication of Purchasers

"There is always less likelihood of confusion where goods are expensive and purchased after careful consideration." *Electronic Design & Sales Inc. v. Electronic Data Systems Corp.*, 21 USPQ2d 1388, 1392 (Fed. Cir. 1992) (citing *Astra Pharmaceutical Products v. Beckman Instruments*, 718 F.2d 1201, 220 USPQ 786, 790 (1st Cir. 1983)).

Applicant's goods are not consumer products and would be bought by industrial and professional purchasers, namely industrial and professional purchasers in the compound feed industry. The goods are not self-purchased, mass-market items, but are non-medical additives to fodder in the form of enzyme preparations for increasing the degradation of anti-nutritive substances which are bought after careful examination of their characteristics and specifications. "This is not the sort of purchasing environment in which confusion flourishes." *Oreck Corp. v. U.S. Floor System, Inc.*, 231 USPQ 634, 640 (5th Cir. 1986).

In light of the nature of the Applicant and the Registrant's goods, consumers of their respective goods are not members of the public at large, but rather members of specialized industries. As one commentator explains:

Where the relevant buyer class is composed solely of professional or commercial purchasers, it is reasonable to set a higher standard of care than exists for consumers. Where the relevant buyer class is composed only of professionals or commercial buyers familiar with the field, they are usually knowledgeable enough to be less likely to be confused by trademarks that are similar. Such professional buyers are less likely to be confused than the ordinary consumer.

J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 23:101 (4th ed. Thomson Reuters 2014).

Due to the extreme care and consideration exercised by purchasers of the products of both parties, it is highly unlikely that such purchasers would be confused as to the source of the parties' respective goods. Applicant and Registrant's goods will not be purchased as a result of mass consumer advertising, rather, they will be bought with the highest level of care after extensive review the products. Under such circumstances, the likelihood of potential confusion is *de minimis*. Accordingly, Applicant submits that due to the sophistication of the relevant class of purchasers, purchasing decisions will not be taken lightly and any confusion as to the source of the respective goods is very unlikely.

The Differences in the Marks

When analyzing likelihood of confusion under Section 2(d) of the Lanham Act, marks must be considered in their entirety. "A mark should not be dissected or split up into its component parts and each part then compared with corresponding parts of the conflicting mark to determine the likelihood of confusion." *McCarthy* at § 23:41. As the Supreme Court observed, "the commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety." *McCarthy* at § 23:41 (citing *Estate of P.D. Beckwith, Inc. v. Commissioner of Patents*, 252 U.S. 538, 545-46, 64 L. Ed. 705, 40 S. Ct. 414 (1920)).

In this case, Applicant's mark and the Cited Registration may be superficially similar in that they both contain the words "ENZY" and "FLEX," however, the inquiry as to the similarity of the marks does not stop there. Rather, when viewed as a whole, the Applicant's applied-for

mark and the Cited Registration are very different in appearance, sound, connotation, and commercial impression. Applicant notes the following differences between its mark and the Cited Mark:

- a. Applicant's mark contains the unique and very prominent wording, "CARBO," whereas the Cited Mark does not;
- b. The Cited Mark is depicted as one word "Enzyflex," whereas the applied-for mark is two separate words "ENZY" and "CARBOFLEX." The depiction of the respective marks in this manner; and
- c. Applicant's mark is appreciably longer than the Cited Mark, both visually and when spoken aloud.

In addition, there are differences in meaning the likely perceived meaning of the mark resulting from the use of the term "CARBO" in the applied-for mark, which may be suggestive of an application for the goods having to do with carbohydrates.

The facts set forth above show that the Applicant's mark creates a different visual and aural impression from the Cited Registration, as well as a difference in the likely perceived meaning of the mark. Taken together, these differences create an overall commercial impression very different from that of the Cited Registration, thus eliminating any likelihood of confusion. Thus, this du Pont factor regarding the similarity or dissimilarity of the marks favors the Applicant.

The Cited Registration is not "strong" or "famous"

As a final matter, there is no evidence in the record that the Cited Registration has become famous or that the Cited Registration is entitled to any more than the bare presumption of distinctiveness accorded by a registration on the U.S. Principal Register.

In this case, the Cited Registration is comprised of the words "ENZY" and "FLEX," both of which are very commonly used in connection with the type of goods that the Registrant provides, namely, "vitamins, mineral supplements, nutritional supplements, dietary supplements." Notably, the word "FLEX" is found in at least 195 active registrations on the Principal Register identifying one or all of Registrant's Goods and the word "ENZY" is found in 112 active registrations on the Principal Register identifying the same goods.

While the numerous registrations are not evidence that said marks are in actual use, their existence indicates that the words "ENZY" and "FLEX" may be recognized as having some significance with respect to vitamins, mineral supplements, nutritional supplements, and dietary supplements. "The fact that the USPTO has allowed so many registrations containing a shared term may be used 'to establish that [the] portion common to the marks involved in a proceeding has a normally understood and well-known meaning [and] that this has been recognized by the [USPTO]...; and that therefore the inclusion [of the shared term] in each mark may be an

insufficient basis on which to predicate a holding of confusing similarity.’” *Rocket Trademarks Pty Ltd. v. Phard S.p.A.*, 98 USPQ2d 1066 (TTAB 2011), quoting from *Red Carpet Corp. v. Johnstown American Enterprises Inc.*, 7 USPQ2d 1404, 1406 (TTAB 1988).

Consumers are accustomed to seeing the words “ENZY” and “FLEX” used in trademarks for the types of goods that the Registrant provides, and are also accustomed to distinguishing between them based on minor differences in the marks. When a portion of a mark is so commonly used, the public will look to other elements to distinguish the source of the goods. See *In re Dayco Products-Eaglemotive Inc.*, 9 USPQ 1910 (TTAB 1988) (finding “IMPERIAL” for automobiles and structural parts was registrable alongside “IMPERIAL” for automotive products). Thus, it follows that if so many marks containing similar wording are able to co-exist on the register for the same goods, Applicant’s applied for mark for use in connection with entirely different goods, restricted to a very specific veterinary use, should also be permitted to co-exist on the register.

As discussed herein, Applicant’s applied-for mark differs from the Cited Registration in numerous respects, including differences in sight, sound, meaning and overall commercial impression, differences in the goods, channels of trade and relevant purchasers. Together, these differences strongly support a finding that there is no likelihood of confusion between the applied-for mark and the Cited Registration.

IN CONCLUSION, Applicant respectfully requests that the refusal of registration be withdrawn and prays that its application be approved for publication in the *Official Gazette*, since Applicant has complied with all outstanding requirements and established a valid basis for U.S. registration.

Respectfully submitted,

E. Cominoli.

Dated: October 26, 2015

By: _____
Elizabeth A. Cominoli

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Attorneys for Applicant

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TRIARCO INDUSTRIES INC IPO

[Overview](#) [News Headlines](#) [Financials & Filings](#) [Experts](#)

[Key Data](#) [Use of Proceeds](#) [Competitors](#)

Company Overview

Company Name	TRIARCO INDUSTRIES INC
Company Address	400 HAMBURG TPK WAYNE, NJ 07470
Company Phone	9739425100
Company Website	--
CEO	Rodger R. Rohde, Sr.
Employees (as of 6/30/1998)	177
State of Inc	DE
Fiscal Year End	12/31
Status	Withdrawn (9/2/1998)
Proposed Symbol	--
Exchange	NASDAQ
Share Price	\$14.00
Shares Offered	3,300,000
Offer Amount	\$53,130,000.00
Total Expenses	--
Shares Over Alloted	495,000
Shareholder Shares Offered	--
Shares Outstanding	12,693,838
Lockup Period (days)	180
Lockup Expiration	--
Quiet Period Expiration	--
CIK	0001065471

Company Description

OVERVIEW

The Company is a leading vertically integrated supplier of high-quality, high-purity natural product ingredients in "ready-to-run" form to nutritional supplement manufacturers. The Company cultivates, procures, cleans, processes, grinds, granulates, blends and formulates premium natural products that meet the increasing demands of its customers for value-added ingredients. The Company works closely with these customers in developing products that meet the customers' desired label claims with consistent and measurable compounds. Moreover, the Company's ingredients are "ready-to-run," which enables its customers to introduce these ingredients immediately into the manufacturing process without additional preparation. The Company develops various ready-to-run forms that accommodate customers' existing tablet, capsule, powder or liquid packaging capabilities. In addition, the Company provides to its customers value-added technical and R&D support.

The Company's customers include a diverse range of nutritional supplement

manufacturers which process the Company's natural product ingredients into consumer salable form which are then marketed through various distribution channels. These distribution channels include (i) multi-level marketers such as Herbalife and Amway, (ii) specialty health products retailers such as GNC, Whole Foods and Wild Oats and (iii) mass market retailers such as major drug stores, supermarkets and discount stores. Under the dedication and leadership of the Rohde family, who share more than 40 years experience in the nutritional supplements industry, the Company has developed long-standing relationships with industry leaders including GNC, Global Health (a major manufacturer for Herbalife), Pharmavite and Rexall Sundown. GNC's manufacturing subsidiary and Global Health represented approximately 36.6% and 35.9%, respectively, of the Company's net sales in 1997, and in common with peers in its industry, the Company does not have long-term contracts with these or other customers. Each distribution channel targets consumers with specific purchasing characteristics with respect to product formulation, quality and price. By maintaining the flexibility to effectively assist its customers in meeting these diverse consumer requirements, the Company believes it maximizes its ability to continually increase the breadth and depth of its customer base.

Quality assurance and quality control are a fundamental aspect of the Company's business strategy. These disciplines are designed to address both the quality of the Company's botanical manufacturing process and the identity and purity of the Company's ingredients. The Company continues to invest in agricultural, scientific and manufacturing assets and personnel and is committed to elevating the standards for acceptable purity, consistency and quality of natural product ingredients, thus establishing a competitive advantage over other ingredient suppliers. In conjunction with this effort, the Company launched its Agricultural Division in late 1996 by leasing a 500 acre certified organic farm, principally for the purpose of conducting agricultural R&D. In addition, the Company is currently constructing a state-of-the-art Herbal Processing Facility that will expand its botanical processing capacity and capabilities.

COMPETITIVE STRENGTHS

INNOVATIVE CUSTOMER SOLUTIONS

Vertical integration provides the Company with the operational flexibility and breadth of capabilities to offer innovative customer solutions in a rapidly evolving industry. The Company's botanical ingredient production system begins with the acquisition of raw botanicals and extends through the shipment of consistent, high-quality, high-purity ingredients to its customers in ready-to-run form. As a result, the Company is able to provide to its customers innovative solutions at each level of botanical production, from R&D at the agricultural level to branding initiatives at the consumer level, thus meeting the increasing demand of customers for value-added ingredients and services. This vertical integration is in contrast to many of the Company's competitors, which typically possess only a few botanical processing capabilities in-house. See "--Products--Branding Initiatives" and "--Processing."

DOCUMENTED QUALITY ASSURANCE PROGRAM

To ensure the production of high-quality, high-purity natural product ingredients, the Company utilizes a documented quality assurance program. This program implements GMPs established by the FDA that, among

other things, address processing, cleanliness, testing, sampling and formulations. The Company believes that in appropriate instances its GMPs approach pharmaceutical standards. Currently, the Company is pursuing ISO 9002 certification (an internationally recognized quality assurance standard), which it believes will complement its customers' GMP endeavors and facilitate entry into European markets.

STRINGENT QUALITY CONTROL

The Company has developed and operates a comprehensive quality control program that subjects all of the Company's products to a battery of stringent tests commencing prior to acceptance of raw materials and continuing through the shipment of finished goods. This program, among other things, identifies botanical raw materials and measures the marker compounds. By precisely identifying and measuring marker compounds, the Company selects and standardizes ingredients to customer specifications, thus substantially reducing the natural inconsistencies of raw botanicals. To support this effort, the Company has made significant investments in sophisticated testing methods and equipment, including thin layer chromatography ("TLC"), gas chromatography ("GC") and high performance liquid chromatography ("HPLC"). The Company's stringent quality control is a value-added service that complements its customers' internal quality control programs.

BROAD CUSTOMER REACH

The Company supplies natural product ingredients to customers that manufacture nutritional supplements for sale through three major distribution channels: multi-level marketers, specialty health products retailers and mass market retailers. Each distribution channel targets consumers with specific

purchasing characteristics with respect to product formulation, quality and price. By maintaining the flexibility to effectively assist its customers in meeting these diverse consumer requirements, the Company believes it maximizes its ability to continually increase the breadth and depth of its customer base.

EXPERIENCED MANAGEMENT

The Company's management team has extensive experience in the nutritional supplements industry. Rodger R. Rohde, Sr., who founded the Company in 1978, has over 30 years of experience in the nutritional supplements, flavors and fragrance industries. Since the Company's inception, Rodger R. Rohde, Sr. and each of the other Rohde Family Members who has subsequently joined him have been actively involved in the day-to-day operations of the business. The Rohde Family Members have developed long-standing relationships with industry leaders, such as GNC, Global Health, Pharmavite and Rexall Sundown, as well as with major vendors of the Company's raw materials. In an industry characterized by few long-term contracts, these long-standing relationships are a significant source of competitive advantage.

GROWTH STRATEGY

The Company's growth strategy is to maintain and strengthen customer relationships and improve operations and financial performance by focusing on the following principal elements:

BROADEN MARKET REACH

Develop New Products. The Company, through the efforts of its product development team, has four patents on enzyme products and is continuing to aggressively develop patentable formulas and processes, as well as other proprietary ingredients. The Company's growth strategy entails aiming new product development initially at the multi-level marketing distribution channel to capture the benefits of personal selling and maximize consumer acceptance of the new product or category. This new product development effort will be marketed to new and existing customers by the Company's new national sales manager and sales team.

Enter New Markets. The Company plans to leverage its competitive strengths to enter related markets in the natural products industry, such as the natural food and cosmetic and beauty aids industries, as well as the pharmaceutical industry. Each of these related industries is increasingly demanding premium natural ingredients. The Company also plans to pursue sales into international markets by recruiting dedicated sales professionals and continuing to register products and trademarks in attractive foreign markets.

Strengthen Existing Relationships. The Company's long standing customer relationships are based on its commitment to providing high-quality, high-purity ingredients and proactive customer service. The Company's growth strategy entails assembling specialized internal marketing teams to develop innovative customer solutions, such as specialized ingredient blends and end-product forms, technical and R&D assistance, and flexible and reliable deliveries. In addition, senior management continues to support new initiatives that augment customers' new product development and marketing activities.

IMPROVE RAW MATERIAL QUALITY AND AVAILABILITY THROUGH AGRICULTURAL R&D

As a part of its agricultural R&D efforts, the Company is developing improved farming methods for its raw botanicals at its 500 acre certified organic farm. These farming initiatives are designed to increase yield, improve plant strength, accelerate plant growth and reduce related farming costs. Additional agricultural R&D initiatives are directed at developing methods to cultivate naturally occurring raw materials which traditionally have been purchased from gatherers. The Company intends to leverage the proprietary knowledge gained from its agricultural R&D by assisting other growers in improving the quality and yield of their raw materials and providing incentives to such growers to cultivate raw materials on behalf of the Company.

DEVELOP BRAND NAME RECOGNITION

The Company's growth strategy emphasizes building strong recognition, at the consumer level, of the Company's branded ingredients as premium brands of high-quality, high-purity natural product ingredients. The Company's Fingerprint(R) Botanicals trademark is used on a line of products sold by GNC and is specifically attributed to the Company on the labeling of these GNC products. The Company will promote this and other brands it is currently developing for mass market retailers through a widespread multimedia marketing and advertising strategy aimed at both its customers and the end consumers.

PURSUE STRATEGIC ACQUISITIONS

The Company plans to capitalize on the highly fragmented nature of the nutritional supplements industry by seeking acquisitions of (i) additional natural ingredient manufacturing companies, (ii) niche companies that provide services along the botanical ingredient production process, (iii) agricultural

concerns that produce raw materials, (iv) companies that provide vertical integration opportunities for the Company's enzyme and mineral product lines and (v) companies in related industries such as natural foods and cosmetic and beauty aids.

INDUSTRY GROWTH

The natural products industry is composed of three segments: nutritional supplements, natural foods, and natural cosmetics and beauty aids. Within the natural products industry, the Company competes primarily in the nutritional supplements segment which is composed of vitamins, minerals and other dietary supplements. The Company is also currently developing products suitable for sale to the natural foods and natural cosmetics and beauty aid segments.

NUTRITIONAL SUPPLEMENTS

According to The U.S. Market for Vitamins, Supplements, and Minerals, a 1997 market report prepared by Packaged Facts (the "Packaged Facts Report"), an independent consumer marketing research firm, the retail market for vitamins, minerals and other supplements (excluding sports nutrition and diet products) has grown at a CAGR of 15.0% from \$3.7 billion in 1992 to \$6.5 billion in 1996, representing annual growth rates of 16.9%, 14.8%, 16.2% and 12.2% during that period. A large portion of this growth is attributable to an increase in sales of other supplements (primarily herbal products), which grew from \$570 million in 1992 to \$2.3 billion in 1996. Growth in this category has been fueled by the popularity of such herbs as echinacea, garlic, ginseng, ginkgo and, more recently, saw palmetto and St. John's wort. According to the Packaged Facts Report, CAGRs from 1992 through 1996 for vitamins, minerals and other supplements were 8.0%, 5.3% and 41.7%, respectively. From 1992 to 1996 the annual growth in the retail market for vitamins was 13.0%, 8.1%, 6.4% and 4.8%; for minerals was 2.5%, 1.7%, 6.5% and 10.7%; and for other supplements was 49.1%, 47.1%, 45.6% and 26.4%. In addition,

the Packaged Facts Report forecasts a 13.6% CAGR in the market for vitamins, minerals and other supplements (excluding sports nutrition and diet products), including a 25% CAGR in the market for other supplements, through 2001.

The Company believes that growth in the nutritional supplements industry has been driven by (i) the aging of the "baby boom" generation combined with consumers' tendency to purchase more nutritional supplements as they age, (ii) the publication of research findings supporting the positive health effects of certain nutritional supplements, (iii) increased media attention on the use and efficacy of nutritional supplements, (iv) the nationwide trend toward preventive medicine in response to rising healthcare costs, (v) increased consumer interest in herbs and herb-related supplements and (vi) increased interest in healthier lifestyles and the connection between diet and health.

NATURAL FOODS AND NATURAL COSMETICS AND BEAUTY AIDS

The Company believes that the natural foods and natural cosmetics and beauty aids industries will also demonstrate growth due to several factors, including (i) consumer concern over the purity and safety of foods and cosmetics and beauty aids due to the presence of pesticide residues, preservatives, artificial ingredients and other chemicals, (ii) consumer awareness of the link between diet and health, (iii) consumer desire for cosmetics and beauty aids free from animal testing and (iv) consumer awareness of environmental issues. The proliferation of natural food supermarkets, including Whole Foods and Wild Oats, is helping to fuel growth in these industries, as well as the increasing acceptance of natural food products and cosmetics by traditional grocery stores and supermarkets.

DISTRIBUTION CHANNELS

The natural products industry growth has been fueled by sales across a number of distribution channels. Nutritional supplements are sold through several channels of distribution, primarily mass market retailers, specialty health products retailers and multi-level marketers, as well as through mail order and the Internet. In 1996, according to the Packaged Facts Report, 45.8% of sales of vitamins, minerals and other supplements were generated through the mass market retailers channel, 38.2% of such sales through specialty health products retailers and 16.0% of such sales through multi-level marketers, mail order and the Internet.

The United States mass market retailers distribution channel consists of major drug stores, supermarkets and discount stores. According to the Packaged Facts Report, in the mass market retailers distribution channel, sales of vitamins, minerals and other supplements have increased from approximately \$2.3 billion in 1994 to approximately \$3.0 billion in 1996. Sales of herbal and other supplements have exhibited the highest level of growth in the mass market distribution channel from 1994 to 1996. Within drug stores and discount stores, sales of herbal and other supplements increased as a percentage of total sales from an estimated 13.1% in 1994 to an estimated 20.9% in 1996. Herbal and other supplements have begun to penetrate food stores as well, increasing from 8% of total sales in 1994 to 12% in 1996.

The United States specialty health products retailers distribution channel is composed of over 9,500 stores, which are generally either independently

owned or associated with one of several regional or national chains, such as GNC, Wild Oats and Whole Foods. According to the Packaged Facts Report, nutritional supplements account for over 38% of a typical health products store's sales. The specialty health products retailers channel of distribution has continued to experience growth in recent years as national chains, as well as other industry participants, continue to add stores in new and existing markets.

The distribution of products through multi-level marketing has grown significantly in recent years. The Direct Sellers Association (the "DSA") reported total 1996 direct sales at retail of \$20.8 billion in the United

States. According to the Survey of Attitudes Toward Direct Selling commissioned by the DSA, food, nutrition and wellness products are among the fastest growing categories in the direct selling industry.

PRODUCTS

The Company offers a broad range of ready-to-run premium ingredients for nutritional supplements and other natural products. In 1997, the Company manufactured over 700 products in three categories, botanicals (herbs), teas and specialty products, which accounted for 55.6%, 27.7% and 16.7% of net sales, respectively. The Company is continually reviewing and rationalizing its product line in order to focus on products with higher margins and growth potential in conjunction with customers' needs.

BOTANICALS (HERBS)

Botanicals are ingredients derived from plants that are cultivated or collected and processed with the intent to supplement wellness. Examples of the Company's botanicals include bilberry, black cohosh, chamomile, cranberry, dong quai, echinacea, feverfew, garlic, ginkgo biloba, ginseng, goldenseal, guarana, kava kava, milk thistle, St. John's wort, saw palmetto and valerian. The Company sells botanicals as milled powders and, to a limited extent, granulations, where the plant has been dried and ground, and extracts, where the plant has been dried, ground and exposed to solvents designed to concentrate the constituents of the botanical, with the remaining solvents being distilled off leaving a concentrated paste. Botanical extracts are sold as liquid extracts (emulsions) or, if dried, as powdered extracts. The Company has the capability of producing and blending each of its botanicals in a wide variety of forms and concentrations to meet the various requirements of its customers. For example, the Company produces over 20 ginseng products that vary as to marker compound concentration, density, viscosity and form, a capability possessed by few of the Company's competitors.

TEAS

The Company has developed a proprietary process to manufacture a granulated instantized tea mix formulation that meets the specified preparation, flavor, calorie and energy requirements of Herbalife, which purchases this formulation from Global Health. These teas were launched in 1994 and have achieved a high level of consumer acceptance as a weight management product and are promoted by Herbalife both domestically and internationally. The Company is currently collaborating with Herbalife and Global Health to develop a line extension of flavored teas to improve the penetration of, and expand the overall market for, its tea.

SPECIALTY PRODUCTS

Minerals. The mineral ingredients sold by the Company are compounds that seek to increase the effectiveness of elemental minerals by binding them to other organic materials. Examples of the Company's minerals include calcium, chromium, iron, magnesium, molybdenum, selenium and zinc. In addition, the Company blends certain minerals to produce premixed ingredients for customers which manufacture multivitamins.

Enzymes. Enzymes are proteins that isolate and break down certain compounds within certain classifications of foods. Examples of the Company's enzymes include cellulase, lactase, lipase and protease which isolate and break down cellulose, lactose, fats and protein, respectively. The Company has also created custom enzyme blends such as Agree(TM) Enzymes that exploit the specific activities of individual enzymes to address the most common digestive intolerances associated with dairy products, rich foods, beef, pork and fish, fruits and vegetables, and pasta and potatoes. In addition, the Company has patented enzyme systems such as Legumase(R), an anti-flatulent, Aminogen(R), a sports nutrition product designed to aid in the break down of proteins for muscle building, and Carbogen(R), which breaks down complex carbohydrates. Although enzymes accounted for minimal net sales in 1997, the Company believes that the category exhibits significant growth potential.

Other Specialty Products. Other specialty products include aloe vera, dry apple cider vinegar, garlic oil, lactobacillus acidophilus, lecithin, parsley seed oil, shark cartilage, spirulina algae and various specialty ingredients for the sports nutrition, dietary, and cosmetics and beauty aids industries.

BRANDING INITIATIVES

One of the Company's growth strategies is to create recognition of the Company's products at the consumer level through branding initiatives. The Company expects that creating recognition of its ingredients at the consumer level and the association of the Company's brand with high-quality, high-purity ingredients will result in increased demand by the Company's customers for the Company's ingredients.

GNC was the first customer to support the concept of the Company's branded ingredients and introduced its Nature's Fingerprint line in 1995. GNC's Nature's Fingerprint line contains the Company's first line of branded, premium, natural ingredients, Fingerprint (R) Botanicals. Supported by the use of TLC, an advanced scientific identifying testing method that reveals a botanical's "fingerprint," the Fingerprint (R) Botanicals brand has a distinct consumer marketing appeal. The Company-owned Fingerprint (R) Botanicals trademark and logo, along with the Company's name, appear on the bottles of all two-piece capsule and liquid Nature's Fingerprint products for which the Company supplies ingredients.

The Company is currently developing other branded ingredients for mass market retailers and plans to promote its branded ingredient products through a widespread multimedia marketing and advertising strategy aimed at both its customers and the end consumers.

CUSTOMERS

The Company sells its products to a diverse range of nutritional supplement manufacturers for multi-level marketers, specialty health products retailers and mass market retailers, as well as private label manufacturers. Selected key customers of the Company include:

GNC.....

GNC is a domestic and international specialty retailer of vitamin and mineral supplements, sports nutrition products and herbs and is also a provider of personal care and other health related products. As of January 31, 1998, the GNC chain consisted of approximately 3,210 stores domestically and approximately 225 owned and franchised stores in approximately 15 international markets, including the United Kingdom and Canada. For the year ended January 31, 1998, net revenue totaled approximately \$1.2 billion. GNC has been a customer of the Company since 1980 and accounted for 36.0%, 36.6% and 33.8% of the Company's net revenues in 1996, 1997 and the six months ended June 30, 1998, respectively.

Global Health.....

Global Health is a developer and custom manufacturer of dietary and nutritional supplements. Global Health develops and manufactures vitamins, minerals, herbs, teas and other supplements in tablet, capsule and powder form in a variety of shapes, sizes, colors, flavors and textures designed to meet its customers' specifications. Global Health's products are sold to over 60 customers, including Herbalife, which accounted for a major portion of Global Health's sales in 1997. Herbalife is a multi-level marketing company that sells a wide range of weight management products, food and dietary supplements and personal care products worldwide. In 1997, Herbalife conducted business in over 36 countries and had retail sales totaling approximately \$1.5 billion. Global Health and its predecessors have been a customer of the Company since 1987 and accounted for 38.0%, 35.9% and 26.0% of the Company's net sales in 1996, 1997 and the six months ended June 30, 1998, respectively.

Pharmavite.....

Pharmavite is a manufacturer and marketer of nutritional supplements, including vitamins, minerals and dietary supplements, under the Nature Made and Nature's Resource brand names. Pharmavite also manufactures private label nutritional supplements on behalf of various food, drug and mass market retailers. Pharmavite is a privately-held company.

Rexall Sundown..... Rexall Sundown develops, manufactures, markets and sells vitamins, nutritional supplements and consumer health products through three channels of distribution: sales to retailers, direct sales through independent distributors, and mail order. Rexall Sundown offers a broad product line of approximately 1,300 products, including vitamins in both multivitamin and single-entity formulas, minerals, herbals, homeopathic remedies, weight management products, skin care products and over-the-counter pharmaceuticals. For the year ended August 31, 1997, net sales totaled approximately \$263 million.

Additional key customers include (i) Banner Pharmacaps Inc., (ii) Celestial Seasonings, Inc., (iii) Chem International, Inc., (iv) Leiner Health Products Inc., a private label manufacturer that also markets nutritional supplements under the Your Life brand, (v) Natural Alternatives International, Inc., a supplier of dosage form nutritional supplements to NSA International, Inc. and Nutrilite Products, a division of Amway, (vi) Nion Laboratories, a division of Weider Nutrition International, Inc. and (vii) Nutrilite Products. Other than GNC and Global Health, no other single customer accounted for 10% or more of the Company's net sales in 1997.

The ultimate consumers of nutritional supplements have varying levels of product awareness, adoption rates, price sensitivity and quality requirements. Therefore, the Company works with its customers to maximize their reach to the broadest possible consumer base. In many instances, the Company works closely with its customers to identify suitable distribution channels and to formulate marketing strategies designed to extend product life cycles and maximize sales and margin potential. The Company's growth strategy entails assembling internal marketing teams to develop innovative customer solutions, such as specialized ingredients blends and end-product medium, technical and R&D assistance, and flexible and reliable deliveries. In addition, senior management is launching new initiatives to support customers' new product development and marketing activities.

RAW MATERIALS

The Company procures substantially all of its raw materials from third parties, with the balance grown at the Agricultural Division.

SOURCING AND PROCUREMENT

The Company sources and procures raw materials for nutritional supplement ingredients from growers, collectors and brokers. Growers cultivate the agricultural raw materials for nutritional supplement ingredients, while collectors gather naturally existing raw materials. In addition to purchasing raw materials directly from growers or collectors, the Company purchases raw materials from brokers who typically consolidate the production of various smaller producers in order to provide the necessary volumes from one source. A substantial portion of the Company's raw materials are not indigenous to the United States and must be procured from foreign growers, collectors and brokers. The Company maintains relationships with approximately 140 growers, collectors and brokers, thus enabling the Company to offer customers a single source for a comprehensive line of natural product ingredients.

The Company's purchasing objective is to ensure a stable supply of natural product raw materials which consistently meet Company specifications at the most competitive price. In conjunction with its growth strategy, the Company has recently hired a new director of purchasing with more than ten years of procurement experience, including with CPC International, Inc. (now known as Bestfoods, Inc.) The director of purchasing is currently exploring incremental efficiencies and economies in the Company's procurement process.

AGRICULTURAL DIVISION

The Company launched its Agricultural Division in the fourth quarter of 1996 and solidified its commitment by entering into a long-term lease for a 500 acre certified organic farm in Jennings, Florida. The Agricultural Division was formed to develop superior methods of breeding and cultivating its botanical raw materials and thus increase yield, improve quality and plant strength, and reduce costs. In addition, the farm supplies a small portion of the Company's requirements for selected botanicals. The farm currently grows several botanicals, including echinacea (purpurea, angustifolia and pallida), St. John's wort and feverfew. Agricultural Division activities include seed sourcing and identification, germination, planting, harvesting, drying and preliminary grinding. In addition to 450 acres devoted to growing botanicals, the Agricultural Division operates a 6,000 square foot warehouse for storing dried botanicals and a 4,000 square foot cooler for storing fresh botanicals. After harvesting and drying (where appropriate) and preliminary grinding (where appropriate), raw botanicals will be shipped by the Company to its Herbal Processing Facility. The Agricultural Division is headed by a senior Ph.D. scientist with over 20 years of food chemistry and engineering

experience, including with GNC. The Agricultural Division employs approximately 16 full-time employees and, based on seasonal needs, will typically employ up to 27 part-time employees. See "--Processing Facilities and Distribution--Herbal Processing Facility."

The knowledge already gained during the Agricultural Division's first 18 months of operations has confirmed the Company's opportunity to improve the raw botanical cultivation process. The Company is continuing to study various farming methods, including seed selection and germination, irrigation, planting techniques, photo sensitivities, and harvesting methods and timing. In addition, by planting a significant crop of a single botanical, the Company expects to identify plants with more favorable genetic constitution and seeks to replicate those plants through R&D. The Company intends to leverage its proprietary knowledge by assisting other growers in improving quality and yield of raw materials and providing incentives to such growers to cultivate raw materials on behalf of the Company.

The Agricultural Division has also commissioned a research study at the Clemson University Agricultural Extension Center in Charleston, South Carolina. In May 1998, this center commenced a research program to observe five key botanicals from germination through one year's growth and identify opportunities to improve the botanicals' life and care. The study is being conducted by scientists with agricultural doctorates specializing in entomology, production, germination (pest and weed) and post harvest. Results of this study are expected to improve the Company's raw botanical cultivation process, as well as serve as a foundation for further research.

PROCESSING

BOTANICAL PROCESSING

The Company's botanical manufacturing process for the creation of natural product ingredients starts with receiving raw botanicals. The raw botanicals are inspected for quality and crushed for ease of handling. The crushed botanicals are blended for consistency and further subject to grinding and extracting. Ground botanicals are packaged for sale or further processed by granulation. Extracts are produced by exposing the ground botanicals to solvents designed to concentrate the constituents of the botanicals, with the remaining solvents being distilled off leaving a concentrated paste. The extract pastes are either spray dried or emulsified into liquid form. Powdered spray dried extracts are returned for granulating and agglomerating. Typically, the Company's customers use these botanical preparations as raw materials for manufacturing consumer products. Currently, the Company outsources three stages of processing, spray drying, agglomeration and sterilization; however, upon completion of the Herbal Processing Facility, the spray drying and agglomeration functions will be performed in-house.

CUSTOMIZING READY-TO-RUN INGREDIENTS

The Company specializes in custom formulated and blended products designed to provide its customer base with unique and differentiated products in ready-to-run form. In many cases, the Company's scientists and formulation experts, through customer product development teams, work with customers to develop viable products which meet the customers' desired label claims, end use requirements and marker compound content. The Company's process engineers also work with customers to develop dosage delivery forms that accommodate customers' existing tableting, capsule, powder or liquid packaging capabilities. A sample of the product is made on a small scale and evaluated to ensure that it will match the customer's requirements. Upon approval, the preliminary specifications, including sample, price and other terms are provided to the customer, and, upon approval thereof by the customer, the formula and manufacturing technology is transferred to production scale.

QUALITY ASSURANCE AND QUALITY CONTROL

The Company utilizes a documented quality assurance program to ensure the production of high-quality, high-purity natural product ingredients for nutritional supplements. This program implements GMPs that, among other things, address processing, cleanliness, testing, sampling and formulations. The Company believes that in appropriate instances its GMPs approach pharmaceutical standards. The Company has also developed and operates a comprehensive quality control program that subjects all of the Company's products to a battery of stringent tests commencing prior to acceptance of raw materials through shipment of finished goods. This program, among other things, identifies botanical raw materials and measures the marker compounds. By precisely identifying and measuring marker compounds, the Company is able to substantially reduce the natural inconsistencies of raw botanicals and standardize its ingredients to customer specifications. To support this effort, the Company has made significant investments in sophisticated testing methods and equipment, including TLC, GC and HPLC. TLC is used to produce a specific marker compound fingerprint of the material which identifies it in terms of genus and species. HPLC procedures are used to quantify specific marker compounds identified from the fingerprint. These techniques are developed in-house by adapting and modifying methods published in the scientific literature. Once developed, these techniques are validated with procedures that are recommended and currently in use by the pharmaceutical industry. The Company is continually researching and developing new procedures

to enhance the scope of testing capabilities and ensure product quality.

PROCESSING FACILITIES AND DISTRIBUTION

The Company currently produces substantially all of its products at its production and warehouse facility located in Paterson, New Jersey (the "Paterson Facility"). In order to further position the Company as a leading supplier of high-quality, high-purity natural ingredients, the Company is constructing the state-of-the-art Herbal Processing Facility in Green Pond, South Carolina.

PATERSON FACILITY

The Paterson Facility is composed of an approximately 60,000 square foot warehouse and an approximately 20,000 square foot production facility. The warehouse handles the receipt of raw materials and the delivery of the Company's products. Accordingly, both raw materials inventory and finished goods inventory are maintained at the warehouse. In addition, initial quality control macro sampling of, and separation of contaminants from, the raw materials is performed at the warehouse. In 1997, the warehouse staged and shipped approximately 1.8 million kilograms of the Company's finished products utilizing only a single shift production schedule. The Paterson warehouse has the capacity to add additional work shifts in response to increased demand for the Company's products.

At the production facility, approximately 17,500 square feet are devoted to grinding, distilling, packaging and other production functions and approximately 2,500 square feet are devoted to quality control, quality assurance and R&D. The Company operates laboratories that run TLC, GC and HPLC assaying tests on the raw materials. The company operates blenders that blend the raw materials, based on the results of the TLC, GC and

HPLC tests, to produce standardized lots. The Company maintains grinders that produce powders and granulates and distillation systems that produce extracts, which can be converted into emulsions. Finally, the Company utilizes packing machines to package its products for delivery.

HERBAL PROCESSING FACILITY

The Company is currently constructing a state-of-the-art Herbal Processing Facility, which is located on an approximately 56 acre campus, in Green Pond, South Carolina, located approximately 40 miles southwest of the Port of Charleston, a major port on the Southeastern Seaboard. The Company believes the Herbal Processing Facility is strategically located, providing ready access to sea, rail and highway transportation, an accessible labor force and proximity to certain key customers, as well as to the Agricultural Division. Upon completion, the Herbal Processing Facility will encompass five buildings: the agricultural pre-processing building, the pharmaceutical building, the extraction building, the finished products building and the R&D laboratory. The Herbal Processing Facility is expected to be able to process approximately 8.0 million kilograms annually of the Company's finished products utilizing a single work shift, thus more than quadrupling the Company's current single shift production capacity. The Herbal Processing Facility will expand capacities and capabilities in response to market demands, resulting in more efficient production of consistent and high-quality products. The Herbal Processing Facility is expected to be completed in mid-1999 at a total cost of approximately \$10 million, of which approximately \$3.4 million has been expended to date.

The agricultural pre-processing building will house the inspection conveyor, to be used for visual and metal inspection, the hammer mills, which will crush the raw materials, and a 325 cubic foot blender, which will blend the crushed raw materials into standardized lots. The pharmaceutical building will be designed with the precision and cleanliness associated with pharmaceuticals, through the use of an air filtration system and negative pressure rooms, among other things, to create a bacteria and debris free environment. The extraction building will contain distillation systems using either water or alcohol to extract the botanicals, which will be spray dried or converted into emulsions.

DISTRIBUTION

The Company primarily utilizes third party common carriers to deliver its natural product ingredients to customers from its warehouses in Paterson, New Jersey and Fountain Valley, California. In addition, the Company maintains a fleet of five large trucks to facilitate local deliveries. As production at the Herbal Processing Facility increases, products will be shipped directly to customers utilizing third party common carriers and additional Company-owned trucks.

RESEARCH AND DEVELOPMENT

A key element in the Company's business strategy is to identify and develop commercial opportunities from ideas generated through its R&D. These R&D efforts are generally devoted to four principal areas, (i) development of new technology, (ii) application of the Company's processing technology to new products, (iii) improvement of existing processes and (iv) development of viable alternate raw materials for natural products extraction and

purification. The Company also conducts R&D at the Agricultural Division. See "--Raw Materials--Agricultural Division."

The Company's internally funded research and development expenditures during 1996, 1997 and the six months ended June 30, 1998 were approximately \$384,000, \$407,000, and \$262,000, respectively. The Company intends to continue actively pursuing research and development efforts and these costs are likely to increase in future periods in conjunction with growth in net sales.

INTELLECTUAL PROPERTY

The Company's proprietary technology and knowledge are important to its business. The Company relies on patents, trade secrets, and confidentiality agreements, as well as continuing technological innovation, to protect its proprietary technology and knowledge and thus maintain its competitive advantage. The Company produces certain products which management believes could not be duplicated without the use of the Company's proprietary knowledge.

The Company has developed numerous proprietary assay methods to test botanicals. The Company's expertise in analyzing, identifying and measuring marker compounds is important to raw material analysis, process development, and process and quality control. Designing a particular process application involves selecting the most appropriate processing steps, determining the proper sequence, and establishing optimum temperature, pressure, solvent and other parameters for each process step. The Company develops variations of its processes based on the nature of the raw material used and the specifications of the desired product.

The Company patents technology when appropriate to obtain long-term protection. The Company owns patents for proprietary composition of matter and manufacturing processes. The Company has three patents for Legumase(R), an enzyme system for antifatulence, which expire February 10, 2014; one patent for Aminogen(R), an enzyme system used to replace free form amino acid supplementation, which expires March 11, 2013; and one patent claim allowed for Carbogen(R), an enzyme system designed to break down complex carbohydrates. In addition, three patents are still pending. With respect to its proprietary processes for which it has not obtained patent protection, the Company relies on internal procedures and trade secret laws to protect these proprietary processing technologies.

The Company protects its proprietary technology and knowledge through established security practices and confidentiality agreements with employees, consultants, strategic industry participants, and technical advisors. Few individuals within the Company possess a full working knowledge of these processes. Joint development agreements and consultant relationships generally allow only limited access to Company information, which is protected through confidentiality agreements with the parties involved. The Company is continually improving its processes and developing additional technological knowledge relating to the extraction of natural products.

COMPETITION

The Company's principal competition comes from major domestic and foreign suppliers of nutritional product ingredients. The Company competes principally on the basis of product quality, product availability and timely delivery, price, value-added R&D, product knowledge and formulation capabilities. The Company believes that it competes favorably with its competitors due to its documented quality assurance program, stringent quality control and vertically integrated development and manufacturing capabilities; its ability to specifically formulate products for distribution along multiple distribution channels; and its ability to react to market trends and customer demands through extensive experience with, and understanding of, its products, as well as its customers and suppliers.

GOVERNMENTAL REGULATION

THE COMPANY

The Company's business is subject to comprehensive regulation by numerous federal governmental agencies, including the FDA, OSHA and EPA. The FDA regulates the Company's products under the FDCA and the regulations promulgated thereunder. In addition, the Company is subject to regulation by various state and local agencies and will be subject to governmental regulations in foreign countries where the Company plans to commence or expand sales.

The FDA has promulgated regulations with respect to the manufacture of pharmaceuticals, foods, flavors and dietary supplements and has established GMPs for, among other things, foods and pharmaceuticals. The

Company's nutritional supplement ingredients fit within the category of "dietary supplements" and, along with the Company's teas, must be manufactured in compliance with food GMPs. Recently, however, the FDA has announced that it is considering promulgating GMPs specific to dietary supplements. If

promulgated, these dietary supplement specific GMPs may be significantly more rigorous than those currently applicable to the Company's products and may require quality assurance requirements similar to pharmaceutical GMPs. Therefore, the Company may be required to expend additional capital and resources in the future to comply with new FDA regulations. Nevertheless, the Company believes its quality assurance in certain cases meets or exceeds the quality assurance levels applicable to pharmaceuticals. The failure of the Company to comply with applicable FDA regulatory requirements could result in, among other things, injunctions, product withdrawals, recalls, product seizures, fines and criminal prosecutions.

The safety of the Company's manufacturing operations are regulated by OSHA. The Company's facilities are currently classified as low risk by OSHA. The Company's operations are subject to laws and regulations governing, among other things, air emissions, waste water discharge, solid and hazardous waste treatment, and storage, disposal and remediation of releases of hazardous materials administered by the EPA and other state and local authorities. The Company has made and intends to continue to make the necessary expenditures for environmental compliance. Health and safety and/or environmental laws and regulations may become more stringent in the future which would increase the costs of compliance.

The Company may be subject to additional laws or regulations by the FDA or other federal, state or foreign regulatory authorities, the repeal of laws or regulations which the Company considers favorable, or more stringent interpretations of current laws or regulations, from time to time in the future. The Company is unable to predict the nature of such future laws, regulations, interpretations or applications, nor can it predict what effect additional governmental regulations or administrative orders, when and if promulgated, would have on its business in the future. They could, however, require, among other things, the reformulation of certain products to meet new standards, the discontinuance of certain products not able to be reformulated, the imposition of additional quality assurance procedures, or expanded or different scientific substantiation.

NUTRITIONAL SUPPLEMENTS INDUSTRY

The Company manufactures ingredients for nutritional supplements that are further manufactured, packaged, labeled, distributed and sold by third party manufacturers, marketers and/or retailers that, along with other similar participants in the nutritional supplements industry, are subject to governmental regulations with respect to their businesses. Though not directly applicable to the Company, the enactment of DSHEA has had a significant effect on the nutritional supplements industry, which effect the Company believes to be favorable. DSHEA revised the provisions of the FDCA concerning the regulation of dietary supplements. The legislation for the first time defined "dietary supplement" as a product intended to supplement the diet that contains one or more of certain dietary ingredients, such as a vitamin, a mineral, an herb or botanical, an amino acid, a dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of the preceding ingredients. A substantial portion of the products sold by the Company are ingredients for dietary supplements.

Under the current provisions of the FDCA, there are four categories of claims that pertain to the regulation of dietary supplements. Health claims are claims that describe the relationship between a nutrient or dietary ingredient and a disease or health related condition and can be made on the labeling of dietary supplements if supported by significant scientific agreement and authorized by the FDA in advance through notice and comment rulemaking. Nutrient content claims describe the nutritional value of the product and may be made if defined by the FDA through notice and comment rulemaking and if one serving of the product meets the definition. Health claims and nutrient content claims may also be made if a scientific body of the U.S. government with official responsibility for the public health has made an authoritative statement regarding the claim, the claim accurately reflects that statement and the manufacturer, among other things, provides the FDA with notice of and basis for the claim at least 120 days before the introduction of the supplement with a label containing the claim into interstate commerce. Statements of nutritional support or product performance, which are permitted on labeling

of dietary supplements without FDA pre-approval, are defined to include statements that (i) claim a benefit related to a classical nutrient deficiency disease and discloses the prevalence of such disease in the United States, (ii) describe the role of a nutrient or dietary ingredient intended to affect the structure or function in humans, (iii) characterize the documented mechanism by which a dietary ingredient acts to maintain such structure or function or (iv) describe general well-being from consumption of a nutrient or dietary ingredient. In order to make a nutritional support claim the marketer must possess substantiation to demonstrate that the claim is not false or misleading and, if the claim is for a dietary ingredient that does not provide traditional nutritional value, prominent disclosure of the lack of FDA review of the relevant statement, and notification to the FDA of using the claim is required. Drug claims are representations that a product is intended to diagnose, mitigate, treat, cure or prevent a disease. Drug claims are prohibited from use in the labeling of dietary supplements.

The advertising of nutritional supplements is subject to regulation by the Federal Trade Commission (the "FTC") under the Federal Trade Commission Act (the "FTCA"). The FTCA prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. In addition, the FTCA provides that the dissemination, or the causing to be disseminated, of any false advertisement pertaining to drugs or foods, which would include dietary supplements, is an unfair or deceptive act or practice. Under the FTC's substantiation doctrine, an advertiser is required to have a "reasonable basis" for all objective product claims before the claims are made. Failure to adequately substantiate claims may be considered either deceptive or unfair practices. Pursuant to this FTC requirement, the manufacturers of nutritional supplements containing the Company's ingredients are required to have adequate substantiation for all material advertising claims made for their products.

In recent years, the FTC has initiated numerous investigations of nutritional supplement and weight loss products and companies. The FTC is reexamining its regulation of advertising for dietary supplements and has announced that it will issue a guidance document to assist supplement marketers in understanding and complying with the substantiation requirement. Upon release of this guidance document, many of the Company's customers will be required to evaluate its compliance with the guideline and may be required to change their advertising and promotional practices.

FACILITIES

The Company maintains offices, production facilities, distribution facilities and a farm. The following table sets forth the location, total land area and facility size of each of the Company's facilities:

FACILITY	LOCATION	SIZE
Corporate headquarters(1).....	Wayne, New Jersey	15,000 sq. ft.
Paterson Facility(2) --Production...	Paterson, New Jersey	20,000 sq. ft.
--Warehouse.....	Paterson, New Jersey	60,000 sq. ft.
Fountain Valley facility(1) (3).....	Fountain Valley, California	5,500 sq. ft.
Herbal Processing Facility(4).....	Green Pond, South Carolina	56 acres
Agricultural Division(1).....	Jennings, Florida	500 acres

- (1) This facility is leased.
- (2) This facility is leased from an affiliate of the Company. See "Certain Transactions."
- (3) This facility is used for sales and distribution primarily to West Coast customers and is leased on a month-to-month basis.
- (4) This facility is currently under construction and is expected to be completed in mid-1999. See "--Production Facilities and Distribution-- Herbal Processing Facility."

EMPLOYEES

As of June 30, 1998, the Company had 120 full time and 57 part-time employees. Of such employees, 113 employees were devoted to production and distribution, 44 employees were responsible for management and administration and 20 employees were scientific personnel. None of the Company's employees are unionized or subject to any collective bargaining agreement. The Company considers its relations with its employees to be good.

PRODUCT LIABILITY INSURANCE

The testing and sale of the Company's products include an inherent risk that product liability claims may be asserted against the Company. The Company has obtained product liability insurance coverage which it believes to be adequate. There can be no assurance that the Company will be able to maintain product liability insurance on acceptable terms or that its insurance will provide adequate coverage against potential claims. While the Company has not experienced any product liability claims, if such claims should arise in the future, they could have a material adverse effect on the Company's business, financial condition and results of operations.

LEGAL PROCEEDINGS

From time to time, the Company is subject to litigation incidental to its business, including product liability claims, which could exceed applicable insurance coverage. The Company currently is not a party to any material legal proceedings.

Close

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