

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22202-3513

Mailed: August 10, 2006
Attn: Cindy B. Greenbaum

ALLERGAN, INC.,

Opposer,

v.

BIOCENTRIC LABORATORIES, INC.,

Applicant,

Opposition No. 9116103
Serial No. 78320975

APPLICANTS BRIEF

BioCentric Laboratories, Inc. hereby submits the following brief in support of upholding the registration of the Applicants mark.

08-10-2006

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #3C

INTRODUCTION

In the introduction page of the Opposer's Brief, the Opposer states that the Applicant admitted that "it intends for the goods sold under the "SEATOX" mark to compete with those sold under the BOTOX® mark ".

This is an out right fabrication.

At no time in these proceedings has the Applicant ever made such a statement and the Opposer has shown no evidence.

On page 12 of the Opposer's brief, in the foot note 11, The Opposer states "Here, because Applicant's customers generally purchase Applicant's goods over the internet, such purchases are inherently "impulsive" because such purchasers are prone to a lesser care".

This is another out right fabrication.

Where is the Opposer's evidence to support this?

The fact is that less then 5% of the Applicants sale come from the internet. 95% of the Applicants sales come from health food stores.

On page 13 of the Opposer's brief, Opposer talks about the Applicant's reference to the product being detoxifying and then the Opposer states that "However, Applicant's own testimony controverts this claim..."

This is yet another out right fabrication.

At no time in these proceedings has the Applicant ever given such a testimony. Where is the Opposer's evidence?

ARGUMENT COMPETITORS

The Opposer will argue the thirteen evidentiary factors as a test for likelihood of confusion and points out the supposed dominant factors.

The Opposer would like us to believe that it distributes its product through the same channels as the Applicant.

The evidence in these proceeding shows no such thing. The Opposer just says that it is so.

The facts show:

The Opposer sells its product through the pharmaceutical market.

The product is a controlled substance.

The product is only available by prescription. ¹

The product is administered in a Doctors office by injections into the face.

By the Opposer's own admission that BOTOX is famous, everyone knows this.

The Applicant sells its product through the natural health market. (i.e. health food stores)

The product is not a controlled substance.

The product is a natural facial cream.

The product is applied in the safety of the customer's home.

The Opposer's product and the Applicant's product are not even in the same ballpark.

The fact is that the Opposer does not market its product through the same channels as the Applicant.

As one looks close to the federal cases cited by the Opposer, they continually refer to competing marks and competitors.

The Opposer wants us to believe that they are competitors with the Applicant because the Applicant's product is intended to reduce the appearance of wrinkles in the skin.

There is no more truth to that than an attempt to make the Applicant a competitor of a plastic surgeon who performs face lifts to eliminate wrinkles.

The Applicant and the Opposer are not competitors and the facts show this.

ARGUMENT DETOXIFYING

The Opposer wants us to believe that the only single property that an ingredient can have to be considered detoxifying is that it "has a detoxifying effect by drawing impurities or toxins out of the body".

¹ Except when the product is illegally obtained like other controlled substances.

Dictionary definitions for detox, detoxify, free radical and antioxidant. See Appendix A.

Detox

tr. v. **de-toxed, de-tox-ing, de-tox-es**

To subject to detoxification.

The American Heritage® Dictionary of the English Language: Fourth Edition.

detoxify

de-tox-i-fied, de-tox-i-fy-ing, de-tox-i-fies

1. To counteract or destroy the toxic properties of.

The American Heritage® Dictionary of the English Language: Fourth Edition.

Free Radical

n.

An atom or group of atoms that has at least one unpaired electron and is therefore unstable and highly reactive. In animal tissues, free radicals can damage cells and are believed to accelerate the progression of cancer, cardiovascular disease, and age-related diseases.

2. An organic compound having some unpaired valence electrons; **a normal byproduct of oxidation reaction in metabolism.**

The American Heritage® Stedman's Medical Dictionary.

Antioxidant

1. A chemical compound or substance that inhibits oxidation. 2. A substance, such as vitamin E, vitamin C, or beta carotene, thought to protect body cells from the damaging effects of oxidation.

The American Heritage® Dictionary of the English Language: Fourth Edition. 2000.

Free radicals create oxidation. Oxidation is involved in the aging process. An antioxidants inhibits oxidation because they **counteract and destroy** the toxic properties of free radicals.

Antioxidants detoxify because they **counteract and destroy** the toxic properties of free radicals.

The Applicants product has a multitude of antioxidants including Vitamin C, Vitamin E and even one of the most powerful antioxidants known, CoQ10 (idebenone).

Then there is the Red Algae Extract in the Applicants product. A seaweed extract that is both exfoliating and detoxifying.

The Opposers cites the Spaar depo as proof that even the Applicant didn't say that the ingredients were detoxifying. What the depo shows is that the ingredients have more then just detoxifying actions. What the depo also shows is how leading questions can really be by not simply asking if any of the ingredients have detoxifying actions.

The Opposers lack of knowledge in what constitutes detoxifying and in an ingredients ability to be multifaceted in their action further shows the truth about the Opposer not operating in the same channels as the Applicant.

Further more there has been no evidence shown to support the Opposer's argument about what is and what is not detoxifying. Absolutely none. The Opposer just says it's so. And because the Opposer says its so, the Applicant doesn't have the right to use TOX.

The Opposer states that in response to discovery, the Applicant provided the following explanation for having chosen the SEATOX mark: "The Sea is for the MSM and the Red Seaweed Extract from the Sea. The Tox is for detoxifying".

The fact is there is no MSM in the product.

The fact is the Applicant made an honest mistake and apologies for this oversight.

It is obvious that the Applicant made a mistake and was not making an attempt to deceive anyone.

There is MSM in many of our products and MSM was considered for the SEATOX product but was never incorporated. We deal with hundreds of ingredients on a daily basis. This is not an excuse for the mistake. It is just the reality that anyone can make an honest mistake.

But this does not change the truth about how the Applicant developed the SEATOX product. The Sea is for the Red Seaweed Extract from the Sea. The Tox is for detoxifying.

The Opposer wants us to believe that because the Applicant was aware of BOTOX that this is proof that the Applicant's mark is an attempt to suggest an affiliation between it and Opposer.

Nothing could be further from the truth.

The Applicant was aware of every mark with TOX posted on TESS (Trademark Electronic Search System).

VIT-RA-TOX

VIT-RA-TOX, registration number 0536196, January 9, 1951.

Rectal ointment, liquid pharmaceutical preparation for use as an absorbent aid in systemic **detoxification** and as an intestinal purificant and multiple vitamin capsules and mineral tablets for use in connection with vitamin and dietary deficiencies.

LIV-A-TOX

LIV-A-TOX, registration number 2147656, March 31, 1998.

Dietary supplements, nutritional supplements, herbal supplements, and vitamins.

Both use Tox in the name.

The Applicant combined Red Algae Extract from the sea in a detoxifying skin care product. The natural facial cream was named "SEATOX". The TOX is for detoxifying.

Presently on the Trademark Electronic Search System there are more than 50 current registered trademarks using TOX.

The United States Patent and Trademark Office has demonstrated that the Opposer does not own TOX, by granting registrations on Trademarks containing TOX after April 15, 2002:

INSTA-TOX, serial number 2902343, November 9, 2004.

Cosmetic and skin care products, namely, creams, lotions and non-medicated, wrinkle-smoothing serums for the face.

SERUTOX, serial number 2806756, January 20, 2004.

Cosmetic for anti-wrinkle purposes.

KNOW TOX, serial number 2961051, June 7, 2004.

Alcohol-free analgesic composition effective for transdermal delivery.

SUMMARY

TESS shows that the use of TOX has been used in trademarks for more than seventy-five years. Through these years TOX has been used to imply many ideas including detoxifying.

The Applicants mark has not and will not in any way cause confusion, to cause mistake, or to deceive and the Opposer has not and will not be damaged in any way by the Applicants mark, just as the Opposer has not been damaged by the existing 50 or more registered marks using TOX, including the marks for INSTA-TOX, SERUTOX, and KNOW TOX that were registered after April 2002.

The Applicant denies any such allegations by the Opposer, that the adopted mark is in any way an attempt to suggest an affiliation between it and Opposer through a license or otherwise.

The Applicant has never desired or will ever desire, to be affiliated with the Opposer.

The Opposer's allegations are without merit and the Opposer has failed to provide proof beyond a reasonable doubt.

The Applicant respectfully asks for judgment to uphold the registration of the Applicants mark.

Sincerely,



Rebecca Spaar
CEO
BioCentric Laboratories, Inc.

RS/lb



detox Search

Dictionary Thesaurus Encyclopedia Web

Home

Premium: Sign up | Login



SHE MARRIED HIM???!
AND THEYVE GOT 7 KIDS??
classmates.com



Find Your Old School Here

- City
- State
Search

ADVERTISEMENT

Dictionary - Thesaurus - Encyclopedia - Web

Top Web Results for "detox"

6 entries found for *detox*.

de·tox Pronunciation Key (dē-tōks') *Informal*
tr. v. **de-toxed**, **de-tox·ing**, **de-tox·es**

To subject to detoxification.

n. (dē-tōks')

A section of a hospital or clinic in which patients are detoxified.

[Short for **detoxify**.]

[Download Now or Buy the Book]

Source: *The American Heritage® Dictionary of the English Language, Fourth Edition*

Copyright © 2000 by Houghton Mifflin Company.

Published by Houghton Mifflin Company. All rights reserved.

de·tox (dē-tōks')

v. **de-toxed**, **de-tox·ing**, **de-tox·es**

Appendix A 10/12

To subject to detoxification.

n. (dē'tōks')

A section of a hospital or clinic in which patients are detoxified.

Source: *The American Heritage® Stedman's Medical Dictionary*
 Copyright © 2002, 2001, 1995 by Houghton Mifflin Company. Published by
 Houghton Mifflin Company.

Main Entry: ¹**de-tox**

Pronunciation: (')dE-'tāks

Function: *noun*

1 *often attributive* : detoxification from an intoxicating or addictive substance <began performing ultra rapid *detoxes* —Carol Ann Campbell & Fredrick Kunkle> <a *detox* program> <a *detox* clinic>

2 : a detox program, ward, or clinic <spent five days in *detox* at a local hospital —Karl Ross> <countless stints in state and private *detoxes* —Gail Caldwell>

Source: *Merriam-Webster's Medical Dictionary*, © 2002 Merriam-Webster, Inc.

Main Entry: ²**detox**

Function: *transitive verb*

: DETOXIFY 2

Source: *Merriam-Webster's Medical Dictionary*, © 2002 Merriam-Webster, Inc.

detox

n : the hospital ward or clinic in which patients are detoxified

Source: *WordNet* ® 2.0, © 2003 Princeton University

detox

DETOX: in Acronym Finder

Source: *Acronym Finder*, © 1988-2004 Mountain Data Systems

Perform a new search, or try your search

for "detox" at:

Appendix A 2 of 12

SEE IF YOU QUALIFY NOW. »



ALLSTATE CUTS SAFE DRIVERS A BREAK— UP TO 20% WITH SAFE DRIVER REWARDS



SEE IF YOU QUALIFY NOW. »

ADVERTISEMENT

Related ads:

- Detox Colon
- Detox Cleanse
- 7 Day Detox Diet
- Detox Tea
- Detox Drinks

- Amazon.com - Shop for books, music and more
- HighBeam Research - 32 million documents from leading publications
- Merriam-Webster - Search for definitions
- Reference.com - Encyclopedia Search
- Reference.com - Web Search powered by Google
- Thesaurus.com - Search for synonyms and antonyms

Find Your Graduating Class



I graduated in: 1996
1986
1976
1966
1956

 classmates.com

ADVERTISEMENT

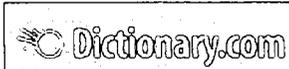
Get the **FREE Dictionary.com Toolbar** for your browser now!

From the makers of Dictionary.com

Copyright © 2006, Lexico Publishing Group, LLC. All rights reserved.

About Dictionary.com | Privacy Policy | Terms of Use | Link to Us | Help | Contact Us

Appendix A 3 of 12



detoxify

Search

[Dictionary](#)
[Thesaurus](#)
[Encyclopedia](#)
[Web](#)

Home

[Premium: Sign up](#) |
[Login](#)

**THE WAY
 FOR EMPLOYERS TO FIND
 GREAT TALENT.**



ADVERTISEMENT

Dictionary - Thesaurus - Encyclopedia - Web

Top Web Results for "detoxify"

5 entries found for *detoxify*.

de·tox·i·fy **P** Pronunciation Key (dē-tɔk'sə-fī')

tr. v. de·tox·i·fied, de·tox·i·fy·ing, de·tox·i·fies

1. To counteract or destroy the toxic properties of.
2. To remove the effects of poison from.
3. To treat (an individual) for alcohol or drug dependence, usually under a medically supervised program designed to rid the body of intoxicating or addictive substances.

[de- + toxi (c) + -fy.]

[Download Now or Buy the Book]

Source: *The American Heritage® Dictionary of the English Language, Fourth Edition*

Copyright © 2000 by Houghton Mifflin Company.

Published by Houghton Mifflin Company. All rights reserved.

de·tox·i·fy (dē-tɔk'sə-fī')

v. de·tox·i·fied, de·tox·i·fy·ing, de·tox·i·fies

1. To counteract or destroy the toxic properties of a substance.
2. To remove the effects of poison from something, such as the blood.
3. To treat a person for alcohol or drug dependence, usually under a medically supervised program designed to rid the body of intoxicating

Appendix A 4 of 12

or addictive substances.

Source: *The American Heritage® Stedman's Medical Dictionary*
 Copyright © 2002, 2001, 1995 by Houghton Mifflin Company. Published by
 Houghton Mifflin Company.

Main Entry: **de-tox-i-fy**

Pronunciation: (') dE-'tāk-s&="fI

Function: *verb*

Inflected Forms: **-fied; -fy·ing**

transitive senses

1 a : to remove a poison or toxin or the effect of such from **b** : to render (a harmful substance) harmless

2 : to free (as a drug user or an alcoholic) from an intoxicating or an addictive substance in the body or from dependence on or addiction to such a substance <the clinic started *detoxifying* him by gradually lowering his dosage —J. M. Markham> **detoxify intransitive senses**

: to become free of addiction to a drug or alcohol —**de-tox-i-fi-ca-tion** / (') dE-'tāk-s&-f&-'kA-sh&n/ *noun*

Source: *Merriam-Webster's Medical Dictionary*, © 2002 Merriam-Webster, Inc.

detoxify

v 1: remove poison from; "detoxify the soil" [syn: detoxicate] 2: treat for alcohol or drug dependence; "He was detoxified in the clinic"

Source: *WordNet® 2.0*, © 2003 Princeton University

detoxify

detoxify: in CancerWEB's On-line Medical Dictionary

Source: *On-line Medical Dictionary*, © 1997-98 Academic Medical Publishing & CancerWEB

Related ads:

- Detoxify Colon
- Detox
- Detoxification
- Liver Cleanse
- Cleansing Liver

Perform a new search, or try your search for "detoxify" at:

- Amazon.com - Shop for books, music and

Appendix A 5 of 12



ADVERTISEMENT

more

- HighBeam Research - 32 million documents from leading publications
- Merriam-Webster - Search for definitions
- Reference.com - Encyclopedia Search
- Reference.com - Web Search powered by Google
- Thesaurus.com - Search for synonyms and antonyms

\$145,000 Mortgage for Under \$484/Month!
 Think You Pay Too Much for Your Mortgage? Find Out!



Select Your State
 Alabama ^
 Alaska ^
 Arizona v

Select Your Rate
 3.99% & Below ^
 4.00% - 4.99% —
 5.00% - 5.99% v

LowerMyBills.com

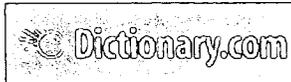
© 2006 Lexico Publishing, LLC

ADVERTISEMENT

Get the **FREE Dictionary.com Toolbar** for your browser now!
 From the makers of Dictionary.com

Copyright © 2006, Lexico Publishing Group, LLC. All rights reserved.
[About Dictionary.com](#) | [Privacy Policy](#) | [Terms of Use](#) | [Link to Us](#) | [Help](#) | [Contact Us](#)

Appendix A 6 of 12



free radical

Search

[Dictionary](#) [Thesaurus](#) [Encyclopedia](#) [Web](#)

Home

 Premium: [Sign up](#) | [Login](#)


SHE MARRIED HIM??!!
AND THEYVE GOT 7 KIDS??
classmates.com



Find Your Old
School Here

City
State
Search

ADVERTISEMENT

[Dictionary](#) - [Thesaurus](#) - [Encyclopedia](#) - [Web](#)

Top Web Results for "free radical"

4 entries found for *free radical*.

free radical

n.

An atom or group of atoms that has at least one unpaired electron and is therefore unstable and highly reactive. In animal tissues, free radicals can damage cells and are believed to accelerate the progression of cancer, cardiovascular disease, and age-related diseases.

[Download Now or Buy the Book]

Source: *The American Heritage® Dictionary of the English Language, Fourth Edition*

Copyright © 2000 by Houghton Mifflin Company.

Published by Houghton Mifflin Company. All rights reserved.

free radical

n.

1. An uncharged atom or group of atoms having at least one unpaired electron, which makes it highly reactive.
2. An organic compound having some unpaired valence electrons; a normal byproduct of oxidation reactions in metabolism.

Appendix A 7 of 12

Source: *The American Heritage® Stedman's Medical Dictionary*
 Copyright © 2002, 2001, 1995 by Houghton Mifflin Company. Published
 by Houghton Mifflin Company.

Main Entry: free radical

Function: *noun*

: an especially reactive atom or group of atoms that has one or more unpaired electrons; *especially* : one that is produced in the body by natural biological processes or introduced from outside (as in tobacco smoke, toxins, or pollutants) and that can damage cells, proteins, and DNA by altering their chemical structure

Source: *Merriam-Webster's Medical Dictionary*, © 2002 Merriam-Webster, Inc.

free radical

n : an atom or group of atoms with at least one unpaired electron; in the body it is usually an oxygen molecule than has lost an electron and will stabilize itself by stealing an electron from a nearby molecule; "in the body free radicals are high-energy particles that ricochet wildly and damage cells" [syn: radical]

Source: *WordNet® 2.0*, © 2003 Princeton University

SAVE UP TO 20%
WITH SAFE DRIVER
REWARDS *



YOU ALWAYS
STOP

SAVE UP TO 20%
WITH SAFE DRIVER
REWARDS *

ADVERTISEMENT

Related ads:

- Free Radicals
- Antioxidants
- Graphic Designer
- Oxygen Scavenger
- Anti Aging

Perform a new search, or try your search
for "free radical" at:

- Amazon.com - Shop for books, music

Appendix A 8 of 12

and more

- HighBeam Research - 32 million documents from leading publications
- Merriam-Webster - Search for definitions
- Reference.com - Encyclopedia Search
- Reference.com - Web Search powered by Google
- Thesaurus.com - Search for synonyms and antonyms

Find Your Graduating Class



I graduated in:

1996
1986
1976
1966
1956


classmates.com

ADVERTISEMENT

Get the **FREE** Dictionary.com Toolbar for your browser now!
 From the makers of Dictionary.com

Copyright © 2006, Lexico Publishing Group, LLC. All rights reserved.

[About Dictionary.com](#) | [Privacy Policy](#) | [Terms of Use](#) | [Link to Us](#) | [Help](#) | [Contact Us](#)

Appendix A 9 of 12



antioxidant

Search

Dictionary
 Thesaurus
 Encyclopedia
 Web

Home

Premium: Sign up |
Login



SHE MARRIED HIM???!
AND THEYVE GOT 7 KIDS??

classmates.com



Find Your Old
School Here

- City
 - State
 Search

ADVERTISEMENT

Dictionary - Thesaurus - Encyclopedia - Web

Top Web Results for "antioxidant"

4 entries found for *antioxidant*.

an·ti·ox·i·dant Pronunciation Key (ănt'ē-ŏk'sī-dənt, ănt'ī-)

n.

1. A chemical compound or substance that inhibits oxidation.
2. A substance, such as vitamin E, vitamin C, or beta carotene, thought to protect body cells from the damaging effects of oxidation.

[Download Now or Buy the Book]

Source: *The American Heritage® Dictionary of the English Language, Fourth Edition*

Copyright © 2000 by Houghton Mifflin Company.

Published by Houghton Mifflin Company. All rights reserved.

Main Entry: **an·ti·ox·i·dant**

Pronunciation: "ant-E-'äk-s&d-ənt, "an-"tī-

Function: *noun*

: any of various substances (as beta-carotene, vitamin C, and alpha-tocopherol) that inhibit oxidation or reactions promoted by oxygen and peroxides and that include many held to protect the living body from the deleterious effects of free radicals —**antioxidant** *adjective*

Source: *Merriam-Webster's Medical Dictionary*, © 2002 Merriam-

Appendix A 18 of 12

Webster, Inc.

antioxidant

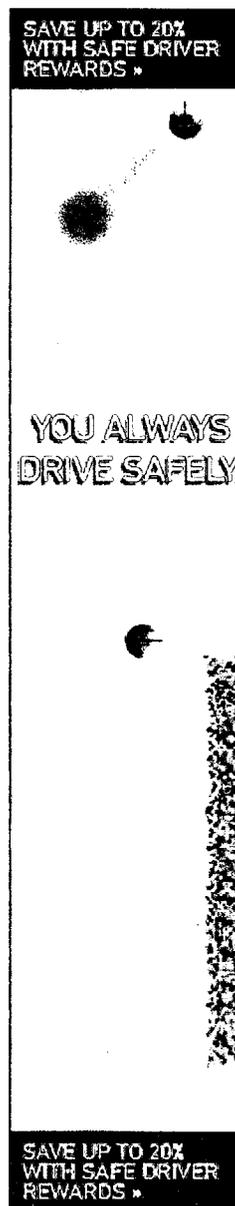
n : substance that inhibits oxidation or inhibits reactions promoted by oxygen or peroxides

Source: *WordNet* ® 2.0, © 2003 Princeton University

antioxidant

antioxidant: in CancerWEB's On-line Medical Dictionary

Source: *On-line Medical Dictionary*, © 1997-98 Academic Medical Publishing & CancerWEB



ADVERTISEMENT

Related ads:

- Antioxidant Supplement
- Super Antioxidant
- Anti Aging
- Pine Bark Extract
- Green Tea Extract

Perform a new search, or try your search for "antioxidant" at:

- Amazon.com - Shop for books, music and

Appendix A 11 of 12

more

- HighBeam Research - 32 million documents from leading publications
- Merriam-Webster - Search for definitions
- Reference.com - Encyclopedia Search
- Reference.com - Web Search powered by Google
- Thesaurus.com - Search for synonyms and antonyms

\$510,000 Mortgage
for Under **\$1,698/Month!**

Don't Pay More for Your Mortgage!
Find Out!

CLICK YOUR STATE
Alabama

CLICK YOUR RATE
3.00% - 3.99%

CLICK CREDIT TYPE
Good

LOWE'S

ADVERTISEMENT

Get the **FREE Dictionary.com Toolbar** for your browser now!

From the makers of **Dictionary.com**

Copyright © 2006, Lexico Publishing Group, LLC. All rights reserved.

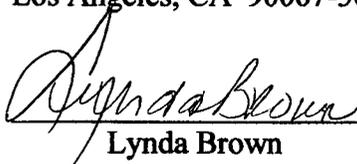
[About Dictionary.com](#) | [Privacy Policy](#) | [Terms of Use](#) | [Link to Us](#) | [Help](#) | [Contact Us](#)

Appendix A 12 of 12

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2006, I served the foregoing papers of BioCentric Laboratories; the new filing Submission #11, by depositing a true copy thereof in a sealed envelope, UPS tracking number 1Z2A68TA850244500 addressed to the Law Offices of the Opposer, address of record as follows:

Seyfarth Shaw LLP
Attn: Kenneth L. Wilton
One Century Plaza
2029 Century Park East
Suite 3300
Los Angeles, CA 90067-3063


Lynda Brown