

ESTTA Tracking number: **ESTTA345731**

Filing date: **05/05/2010**

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

Proceeding	91184700
Party	Plaintiff NBTY, Inc.
Correspondence Address	Scott B. Fisher Jaspan Schlesinger Hoffman LLP 300 Garden City Plaza Garden City, NY 11530 UNITED STATES SFisher@jaspanllp.com
Submission	Withdrawal of Opposition
Filer's Name	Scott B. Fisher
Filer's e-mail	SFisher@jaspanllp.com
Signature	/SBF/
Date	05/05/2010
Attachments	NBTYPhytoTechMotDisGoodSweetDesign.pdf (2 pages)(29109 bytes)

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

In the Matter of Trademark Application

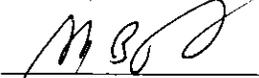
Applicant : Phyto Tech Corp. d/b/a Blue California Co.
Serial No. : 77/427,750
Filed : March 20, 2008
Mark : **GOOD 'N SWEET (AND DESIGN)**
Int'l Class : 005
For : Dietary and nutritional supplements
Int'l Class : 030
For : Sugar substitutes; Natural sweetener
Published : May 20, 2008

-----X
NBTY, Inc., :
 Opposer, :
 vs. : **Opposition No.: 91/184,700**
Phyto Tech Corp. d/b/a Blue California Co. :
 Applicant. :
-----X

MOTION TO DISMISS WITH PREJUDICE

Pursuant to a Settlement And Coexistence Agreement executed by the parties to this proceeding, Opposer, NBTY, Inc., hereby moves to dismiss the Notice of Opposition and this Opposition No. 91/184,700, with prejudice.

Jaspan Schlesinger LLP
Attorneys for Opposer
NBTY, Inc.

By: 
Scott B. Fisher
300 Garden City Plaza
Garden City, New York 11530
(516) 746-8000

Date: 5/5/10

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **MOTION TO DISMISS WITH PREJUDICE** were served on the Attorneys for Applicant, Phyto Tech Corp., by electronic mail and by mailing a copy thereof, via U.S. First Class Mail, in a properly addressed, postage prepaid wrapper, addressed to Robert N. Behle, Jr., Esq., Foley Bezek Behle & Curtis, LLP, 575 Anton Boulevard, Suite 710, Costa Mesa, California 92626, on May 5, 2010.



SCOTT B. FISHER