

ESTTA Tracking number: **ESTTA345733**

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

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

Proceeding	91184702
Party	Plaintiff NBTY, Inc.
Correspondence Address	Scott B. Fisher Jaspan Schlesinger Hoffman LLP 300 Garden City Plaza Garden City, NY 11530 UNITED STATES sfisher@jshllp.com, khirasawa@jshllp.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	NBTYPhytoTechMotDisGoodSweet(005).pdf (2 pages)(28292 bytes)

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