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Filing date: **12/01/2008**

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

Proceeding	91184702
Party	Defendant Phyto Tech. Corp.
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Submission	Other Motions/Papers
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Date	12/01/2008
Attachments	Executed Consent Agreement 77367538.pdf ( 1 page )(32076 bytes )

In the Matter of Trademark Application

Applicant	: Phyto Tech Corp. d/b/a Blue California Co.	Opposition Nos.:
Serial No.	: 77/367,538	91184700
Filed	: January 9, 2008	91184702
Mark	: <b>GOOD 'N SWEET</b>	91184703
Int'l Class	: 005	
For	: Nutritional supplements	
Published	: May 27, 2008	

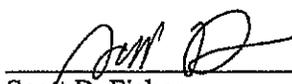
CONSENT AGREEMENT

Opposer, NBTY, Inc., registered owner of the mark "GOOD 'N NATURAL" Reg. Nos. 1232324 and 1813366 hereby consents, pursuant to 37 C.F.R. § 2.133(a) and TBMP §§ 514 and 605.03(b), to the Preliminary Amendment submitted by Applicant, Phyto Tech Corp. d/b/a Blue California, on July 9, 2008, amending U.S. Application Serial No. 77/367,538 from GOOD 'N SWEET to GOOD & SWEET.

Approval by the Board of this Preliminary Amendment is respectfully requested because it changes Applicant's mark and distinguishes it from Opposer's mark. The parties are in the process of finalizing the terms of a coexistence agreement between them which will resolve the pending opposition proceeding. Opposer specifically reserves all of its rights pending execution of the coexistence agreement.

DATED: 11/11/08

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