

ESTTA Tracking number: **ESTTA550128**

Filing date: **07/24/2013**

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

Proceeding	91211695
Party	Plaintiff PSPC, Inc.
Correspondence Address	Wendy K. Marsh Nyemaster Goode, P.C. 700 Walnut Street Suite 1600 Des Moines, IA 50309 UNITED STATES ptodm@nyemaster.com, wkmarsh@nyemaster.com
Submission	Other Motions/Papers
Filer's Name	Wendy K. Marsh
Filer's e-mail	wkmarsh@nyemaster.com, ptodm@nyemaster.com
Signature	/wendy k. marsh/
Date	07/24/2013
Attachments	TRI-COX.Exhibit 1.pdf(17285 bytes ) TRI-COX.Exhibit 2.PDF(465114 bytes ) TRI-COX.Exhibit 3.pdf(20304 bytes ) TRI-COX.Exhibit 4.pdf(12720 bytes ) TRI-COX.Exhibit 5.pdf(2519521 bytes ) TRI-COX.Exhibit 6.pdf(1369854 bytes )

**Int. Cl.: 5**

**Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52**

**Reg. No. 3,294,575**

**United States Patent and Trademark Office**

**Registered Sep. 18, 2007**

**TRADEMARK  
PRINCIPAL REGISTER**

**PHYCOX**

PHARMA CHEMIE, INC. (NEBRASKA COR-  
PORATION)  
1877 MIDLAND STREET, P.O. BOX 326  
SYRACUSE, NE 684460326

FIRST USE 1-23-2007; IN COMMERCE 1-23-2007.

SN 78-269,875, FILED 7-2-2003.

FOR: PHARMACEUTICAL PREPARATIONS,  
NAMELY, ANTI-INFLAMMATORIES, IN CLASS 5  
(U.S. CLS. 6, 18, 44, 46, 51 AND 52).

IRA J. GOODSID, EXAMINING ATTORNEY

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**TriCOX Soft Chews by Sogeval**

- > Flea and Tick Supplies
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- > Vitamins
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TriCOX is a comprehensive joint support supplement for dogs featuring UC-II. UC-II is a form of undentured collagen which has shown to desensitize the immune system and prevent pro-inflammatory immune attacks on joints. Additionally, TriCOX contains Boswellia extract for additional inflammatory support, the powerful antioxidant Astaxanthin, the cartilage building blocks Glucosamine and MSM, and muscle support with creatine.

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**To:** Sogeval Laboratories, Inc. ([frijouf@frijouf.com](mailto:frijouf@frijouf.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 85732399 - TRI-COX - SOGVL.12004  
**Sent:** 1/16/2013 7:08:08 PM  
**Sent As:** ECOM115@USPTO.GOV  
**Attachments:**

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**U.S. APPLICATION SERIAL NO.** 85732399

**MARK:** TRI-COX

**\*85732399\***

**CORRESPONDENT ADDRESS:**

DANIEL R. FRIJOUF  
FRIJOUF, RUST & PYLE, P.A.  
201 E DAVIS BLVD  
TAMPA, FL 33606-3728

**CLICK HERE TO RESPOND TO THIS LETTER**  
[http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp)

**APPLICANT:** Sogeval Laboratories, Inc.

**CORRESPONDENT'S REFERENCE/DOCKET NO :**

SOGVL.12004

**CORRESPONDENT E-MAIL ADDRESS:**

[frijouf@frijouf.com](mailto:frijouf@frijouf.com)

**OFFICE ACTION**

**STRICT DEADLINE TO RESPOND TO THIS LETTER**

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

**ISSUE/MAILING DATE: 1/16/2013**

The assigned examining attorney has reviewed the referenced application and determined the following.

**SEARCH OF OFFICE RECORDS**

The Office records have been searched and there are no similar registered or pending marks that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

## **IDENTIFICATION OF GOODS**

Applicant must amend the identification of goods by clarifying the exact nature of the goods. *See* TMEP §1402.01.

Applicant may adopt the following identification of goods, if accurate:

Canine [clarify exact nature of goods, e.g., dietary, nutritional] supplements for joint support, in INT. CLASS 5.

For assistance with identifying and classifying goods in trademark applications, please see the USPTO's online searchable *U.S. Acceptable Identification of Goods and Services Manual* at <http://tess2.uspto.gov/netahtml/tidm.html>. *See* TMEP §1402.04.

Identifications of goods and/or services can be amended only to clarify or limit the goods and/or services; adding to or broadening the scope of the goods and/or services is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07. Therefore, applicant may not amend the identification to include goods and/or services that are not within the scope of the goods and/or services set forth in the present identification.

## **SIGNIFICANCE OF WORDING**

Applicant must specify whether the wording "TRI-COX" has any significance in the medical or veterinary trade or industry or as applied to the goods described in the application, or if such wording is a "term of art" within applicant's industry. *See* 37 C.F.R. §2.61(b); TMEP §814.

Failure to respond to a request for information is an additional ground for refusing registration. *See In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P'ship LLP*, 67 USPQ2d 1699, 1701 (TTAB 2003); TMEP §814.

## **TELEPHONE FOR ASSISTANCE**

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Alicia Collins Edwards/  
Alicia Collins Edwards  
Examining Attorney  
Law Office 115  
571-272-9147  
alicia.edwards@uspto.gov

**TO RESPOND TO THIS LETTER:** Go to [http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp). Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System

(TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

**All informal e-mail communications relevant to this application will be placed in the official application record.**

**WHO MUST SIGN THE RESPONSE:** It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

**TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS:** Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

**To:** Sogeval Laboratories, Inc. ([frijouf@frijouf.com](mailto:frijouf@frijouf.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 85732399 - TRI-COX - SOGVL.12004  
**Sent:** 1/16/2013 7:08:09 PM  
**Sent As:** ECOM115@USPTO.GOV  
**Attachments:**

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)**

**IMPORTANT NOTICE REGARDING YOUR  
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED  
ON **1/16/2013** FOR U.S. APPLICATION SERIAL NO. 85732399

Please follow the instructions below:

**(1) TO READ THE LETTER:** Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on “Documents.”

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

**(2) TIMELY RESPONSE IS REQUIRED:** Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **1/16/2013** (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

**Do NOT hit “Reply” to this e-mail notification, or otherwise e-mail your response** because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at [http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp).

**(3) QUESTIONS:** For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail [TSDR@uspto.gov](mailto:TSDR@uspto.gov).

**WARNING**

**Failure to file the required response by the applicable response deadline will result in the**

**ABANDONMENT of your application.** For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

**PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION:** Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay “fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see [http://www.uspto.gov/trademarks/solicitation\\_warnings.jsp](http://www.uspto.gov/trademarks/solicitation_warnings.jsp).

## Response to Office Action

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	85732399
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 115
<b>MARK SECTION (no change)</b>	
<b>GOODS AND/OR SERVICES SECTION (current)</b>	
<b>INTERNATIONAL CLASS</b>	005
<b>DESCRIPTION</b>	Canine joint supplements in the nature of soft chews
<b>FILING BASIS</b>	Section 1(b)
<b>GOODS AND/OR SERVICES SECTION (proposed)</b>	
<b>INTERNATIONAL CLASS</b>	005
<b>TRACKED TEXT DESCRIPTION</b>	
<del>Canine joint supplements in the nature of soft chews</del> ; <a href="#">Canine nutritional supplements for joint support.</a>	
<b>FINAL DESCRIPTION</b>	Canine nutritional supplements for joint support.
<b>FILING BASIS</b>	Section 1(b)
<b>ADDITIONAL STATEMENTS SECTION</b>	
<b>MISCELLANEOUS STATEMENT</b>	With the exception of functioning as Applicant's trademark, the wording TRI-COX neither has significance in the medical or veterinary trade or industry nor as applied to the goods described in the application. The wording TRI-COX is also not a term of art within Applicant's industry.
<b>SIGNATURE SECTION</b>	
<b>RESPONSE SIGNATURE</b>	/drf/
<b>SIGNATORY'S NAME</b>	Daniel R. Frijouf
<b>SIGNATORY'S POSITION</b>	attorney
<b>SIGNATORY'S PHONE NUMBER</b>	8132545100
<b>DATE SIGNED</b>	05/29/2013
<b>AUTHORIZED SIGNATORY</b>	YES

<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Wed May 29 11:37:11 EDT 2013
<b>TEAS STAMP</b>	USPTO/ROA-72.77.201.140-2 0130529113711597153-85732 399-500812899d719cf9ba19c d972d14f22edb3b248b137106 63de2132b1d1f352f5-N/A-N/ A-20130529113427024025

PTO Form 1957 (Rev 9/2005)  
OMB No. 0651-0050 (Exp. 05/31/2014)

## **Response to Office Action To the Commissioner for Trademarks:**

Application serial no. **85732399** has been amended as follows:

### **CLASSIFICATION AND LISTING OF GOODS/SERVICES**

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

**Current:** Class 005 for Canine joint supplements in the nature of soft chews

Original Filing Basis:

**Filing Basis: Section 1(b), Intent to Use:** The applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

### **Proposed:**

**Tracked Text Description:** ~~Canine joint supplements in the nature of soft chews;~~ [Canine nutritional supplements for joint support.](#)

Class 005 for Canine nutritional supplements for joint support.

**Filing Basis: Section 1(b), Intent to Use:** The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

### **ADDITIONAL STATEMENTS**

#### **Miscellaneous Statement**

With the exception of functioning as Applicant's trademark, the wording TRI-COX neither has significance in the medical or veterinary trade or industry nor as applied to the goods described in the application. The wording TRI-COX is also not a term of art within Applicant's industry.

### **SIGNATURE(S)**

#### **Response Signature**

Signature: /drf/ Date: 05/29/2013

Signatory's Name: Daniel R. Frijouf

Signatory's Position: attorney

Signatory's Phone Number: 8132545100

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 applicant'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 applicant in this matter: (1) the applicant 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 applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant'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.

Serial Number: 85732399

Internet Transmission Date: Wed May 29 11:37:11 EDT 2013

TEAS Stamp: USPTO/ROA-72.77.201.140-2013052911371159

7153-85732399-500812899d719cf9ba19cd972d

14f22edb3b248b13710663de2132b1d1f352f5-N

/A-N/A-20130529113427024025



FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

2013 FEB 13 PH 2: 26  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA

<p><b>PSPC, INC.,</b></p> <p><b>Plaintiff,</b></p> <p>v.</p> <p><b>SOGEVAL LABORATORIES, INC.</b></p> <p><b>Defendant.</b></p>	<p>CASE NO. <u>13-CV-249-ORL-18-TBS</u></p> <p><b>Jury Trial Demanded</b></p>
--------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------

**COMPLAINT FOR TRADEMARK INFRINGEMENT, TRADEMARK DILUTION,  
FALSE DESIGNATION OF ORIGIN, FALSE ADVERTISING, AND UNFAIR  
COMPETITION**

Plaintiff, PSPC, Inc. ("Plaintiff"), through its undersigned counsel, for its complaint against Defendant, Sogeval Laboratories, Inc. ("Defendant"), alleges as follows:

**PARTIES**

1. Plaintiff, PSPC, Inc., is a corporation duly organized and existing under the laws of the State of Florida, and having a principal place of business in Melbourne, Florida.
2. Defendant, Sogeval Laboratories, Inc., is a corporation organized and existing under the laws of the State of Delaware, and having a principal place of business in Irving, Texas.

**JURISDICTION AND VENUE**

3. This is a civil action for trademark infringement, trademark dilution, false designation of origin and false advertising, and unfair competition arising under the Federal Lanham Act 15 U.S.C. § 1051, et seq. of the Lanham Act; and for trademark infringement and unfair competition under the common law of the State of Florida.

4. Jurisdiction over the parties and subject matter of this action is proper in this Court pursuant to 15 U.S.C. § 1121 (action arising under the Lanham Act), 28 U.S.C. §§ 1331 (federal question), 28 U.S.C. § 1338(a)(any Act of Congress relating to patents or trademarks), and 28 U.S.C. § 1338(b)(action asserting claim of unfair competition joined with a substantial and related claim under the trademark laws). This Court has supplemental jurisdiction over the claims in this Complaint that arise under state statutory and common law pursuant to 28 U.S.C. § 1367(a).

5. This Court has personal jurisdiction over the Defendant because Defendant has committed and continues to commit acts of infringement in violation of 15 U.S.C. §§ 1114 and 1125, and has purposefully targeted Florida, and this district, as a location in which it directs its advertising and products using the infringing mark and trade dress, including its prominent displays of its TriCOX branded products at the recently held North American Veterinary Conference in Orlando, Florida; and where the harm of Defendant's infringing activities is visited upon Plaintiff. As a result, Defendant is subject to the specific jurisdiction of this court. Further, Defendant derives substantial revenue from the sale of infringing products and other products within Florida, and its customer service center is

based in this district, in Oldsmar, Florida. As such, Defendant is subject to the general jurisdiction of this Court.

6. Venue is properly founded in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) because Defendant transacts business within this district and offers for sale in this district products that infringe and dilute Plaintiff's trade dress and trademarks. In addition, venue is proper because Plaintiff suffered harm in this district. Moreover, a substantial part of the events giving rise to the claim occurred in this district.

### **PLAINTIFF'S TRADEMARKS**

7. Since at least as early as January of 2007, Plaintiff, individually and through its distributors and retailers, has been advertising and providing pharmaceutical preparations, namely, anti-inflammatories, to veterinarians and pet owners under the trademark PHYCOX® (hereinafter the "mark") throughout the United States.

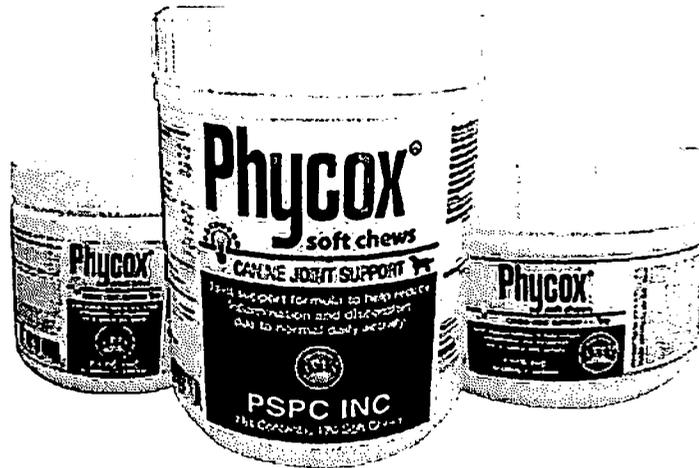
8. The formulations for Plaintiff's PHYCOX® pharmaceutical preparations are protected by patent, namely U.S. Patent No. 7,025,965.

9. Plaintiff is the current owner of the trademark PHYCOX® (separate and apart from any particular lettering), U.S. Trademark Registration No. 3,294,575, for pharmaceutical preparations, namely, anti-inflammatories. A copy of Plaintiff's PHYCOX® trademark registration is attached as Exhibit A.

10. Affidavits have been filed with respect to U.S. Trademark Registration No. 3,294,575 pursuant to Sections 8 and 15 of the Lanham Act, 15 U.S.C. §§ 1058 and 1065, and this registration is incontestable.

11. Plaintiff owns all rights, title, and interest in and to the PHYCOX trademark.

12. Also since at least as early as 2007, Plaintiff has been advertising and providing anti-inflammatories to veterinarians and pet owners under its distinctive logo (hereinafter the "PHYCOX logo") as part of its distinctive trade dress (the "PHYCOX trade dress"), as shown below:



13. The PHYCOX trade dress includes the PHYCOX® trademark and associated logo in a black, rounded font lettering on a white background with the wording "SOFT CHEWS" in a smaller sized, similar style font beneath.

14. The label of the PHYCOX trade dress includes dark green as a complimentary color.

15. The container upon which the PHYCOX® product label is placed is a white cylinder.

16. The PHYCOX® container lid has evenly spaced vertical ribs, each rib extending the length of the lid.

17. Each of the elements of the PHYCOX trade dress is distinctive and serves to identify Plaintiff as the source of the PHYCOX products.

18. None of the elements of the PHYCOX trade dress is functional, and Plaintiff's competitors have a multitude of alternative options available.

19. Plaintiff is the owner of all right and title to the distinctive PHYCOX trade dress. The PHYCOX trade dress is inherently distinctive and not functional.

20. Plaintiff's PHYCOX® mark, PHYCOX logo and PHYCOX trade dress (collectively "Plaintiff's Trademarks" or "the Trademarks") have been regularly used in connection with Plaintiff's anti-inflammatories since at least as early as January 2007.

21. In addition, based on extensive and consistent advertising, promotion and sales throughout the United States, the PHYCOX trade dress has acquired distinctiveness and enjoys secondary meaning among consumers, identifying Plaintiff as the source of these products.

22. Plaintiff's extensive promotion of the distinctive PHYCOX trade dress has resulted in Plaintiff's acquisition of valuable, legally protected rights in the PHYCOX trade dress as well as considerable customer goodwill.

23. Plaintiff sells its PHYCOX® pharmaceutical preparations through numerous distributors and retailers nationwide, including 1-800-PetMeds, Amazon.com, EntirelyPets.com, DrsFosterSmith.com, HealthyPets.com, VetRXDirect.com, JeffersPet.com, and VetDepot.com. Web pages from these retailers showing the PHYCOX® product for sale are attached as Exhibit B.

24. Plaintiff's PHYCOX® products have been widely advertised throughout the United States since 2007 and Plaintiff has had substantial sales of the products. In this regard, since 2007, Plaintiff has sold over \$11 million worth of PHYCOX® products.

25. By virtue of Plaintiff's extensive advertising and sales of its PHYCOX® products throughout the United States, Plaintiff's PHYCOX Trademarks have become widely known and recognized by the public nationwide who, upon seeing the Trademarks, identify the Trademarks exclusively with Plaintiff.

#### **DEFENDANT'S INFRINGING ACTIVITIES**

26. For some time prior to 2009, Plaintiff formulated various soft chew formulations for Defendant to distribute and sell. The formulations distributed and sold by Defendant did not include Plaintiff's PHYCOX® soft chew product.

27. In 2009, Defendant approached Plaintiff specifically about becoming Plaintiff's exclusive distributor for Plaintiff's PHYCOX® products.

28. The parties did not reach an agreement for Defendant to distribute Plaintiff's PHYCOX® products in 2009.

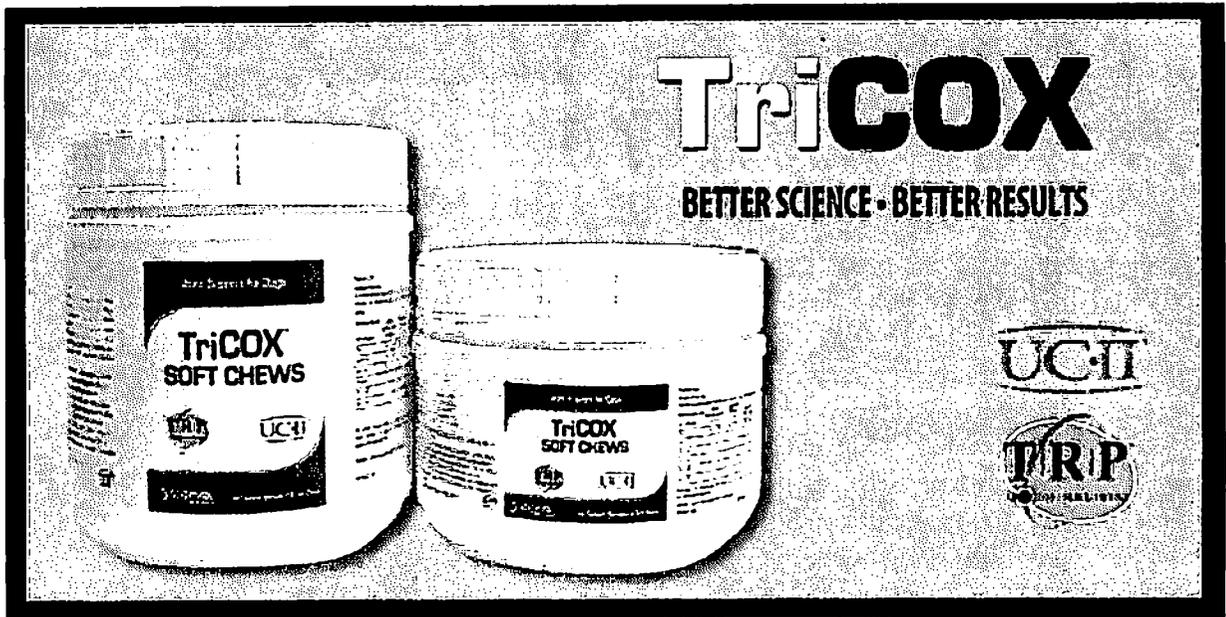
29. Defendant again approached Defendant in 2010 about becoming Plaintiff's exclusive distributor for Plaintiff's PHYCOX® products.

30. The parties also did not reach an agreement for Defendant to distribute Plaintiff's PHYCOX® products in 2010.

31. Within a matter of months after the second failed attempt to reach an exclusive distribution agreement, Defendant ended its relationship with Plaintiff .

32. Plaintiff has only recently learned that Defendant has begun a promotional campaign for new canine anti-inflammatory products under the name "TriCOX".

33. A photograph of a TriCOX branded product, showing its packaging, is shown below:



34. True and correct copies of Defendant's web site showing Defendant's infringing logo are attached here as Exhibit C.

35. Defendant's TriCOX logo embodies a combination of several elements of Plaintiff's trade dress, namely a product configuration with:

- a "COX" product name in black, rounded font lettering;
- the black lettering of the product name on a white background;
- the wording "SOFT CHEWS" beneath the product name;

-the "SOFT CHEWS" wording in smaller black lettering in a font similar to that of "TriCOX" brand;

-dark green as a complimentary color on the label;

-the label placed on a white cylinder-shaped container;

-the container lid having evenly spaced vertical ribs, each rib extending the length of the lid.

36. The "cox" syllable found in both Plaintiff's registered mark and Defendant's infringing brand is the dominant syllable in each.

37. Defendant's TriCOX branded product has misappropriated the PHYCOX trade dress by mimicking a combination of several elements of that trade dress.

38. Defendant's "TriCOX" branded product was launched on January 1, 2013 and is a "supplement designed to support the joint function in dogs with osteoarthritis". (Exh. C).

39. Attached as Exhibit D are copies of Defendant's "TriCOX" branded product from various veterinary publications.

40. Defendant recently advertised its "TriCOX" branded product and logo throughout the 2013 North American Veterinary Conference (NAVC) held in Orlando, Florida from January 19-23, 2013.

41. Copies of Defendant's advertising from NAVC are attached as Exhibit E.

42. Defendant has offered for sale and has made sales of its anti-inflammatory products using the "TriCOX" brand and trade dress to consumers in this judicial district.

43. Defendant used the "TriCOX" brand and trade dress in connection with veterinary anti-inflammatory products with full knowledge of Plaintiff's ownership of and senior rights in and to the "PHYCOX" Trademarks.

44. Plaintiff recently learned that on June 13, 2012, Defendant filed a federal trademark application to register the name "TRICOX-A" for "canine joint supplements in the nature of soft chews."

45. A true and correct copy of Defendant's "TRICOX-A" trademark application from the U.S. Patent and Trademark Office website is attached as Exhibit F. To date, no registration has been granted.

46. Further, Plaintiff recently learned that on September 19, 2012, Defendant filed a federal trademark application to register the name "TRI-COX" for "canine joint supplements in the nature of soft chews."

47. A true and correct copy of Defendant's "TRI-COX" trademark application from the U.S. Patent and Trademark Office website is attached as Exhibit G. To date, no registration has been granted.

### **COUNT I**

#### **False Designation of Origin, False Advertising, and Unfair Competition 15 U.S.C. § 1125(a)**

48. Plaintiff incorporates and realleges paragraphs 1 through 47 of the Complaint.

49. Defendant's manufacture and distribution of the TriCOX branded products with packaging, product design, logo, and name that mimic a combination of elements of the PHYCOX trade dress is likely to cause confusion, or to cause mistake, or to deceive

consumers as to the affiliation, connection or association of Defendant with Plaintiff, or as to the origin, sponsorship, or approval by Plaintiff of Defendant's goods.

50. Defendant's manufacture and distribution of the TriCOX branded products with packaging, product design, logo, and name that mimic a combination of several elements of the PHYCOX trade dress enables Defendant to benefit unfairly from Plaintiff's reputation and success, thereby giving Defendant's infringing products sales and commercial value they would not have otherwise.

51. Defendant's actions constitute unfair competition and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

52. Defendant was fully knowledgeable of Plaintiff's PHYCOX trade dress when it designed its TriCOX branded product. Therefore, Defendant's infringement has been and continues to be intentional, willful and without regard to Plaintiff's PHYCOX trade dress.

53. Plaintiff has been and will continue to be irreparably harmed and damaged by Defendant's conduct, and Plaintiff lacks an adequate remedy at law to compensate for this harm and damage.

54. Defendant has gained profits by virtue of its infringement of the PHYCOX trade dress.

55. Plaintiff has sustained damages as a direct and proximate result of Defendant's infringement of the PHYCOX trade dress.

56. Because Defendant's actions have been willful, Plaintiff is entitled to treble its actual damages or Defendant's profits, whichever is greater, and to an award of costs, and, this being an exceptional case, reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

**COUNT II**

**Federal Trademark Infringement  
15 U.S.C. § 1114**

57. Plaintiff incorporates and realleges paragraphs 1 through 47 of the Complaint.

58. Plaintiff owns a federal trademark registration for the PHYCOX trademark.

Said federal trademark registration is incontestable.

59. Defendant, without authorization from Plaintiff, has used and is continuing to use designations that are confusingly similar to, Plaintiff's trademark.

60. The foregoing acts of Defendant are intended to cause, have caused, and are likely to continue to cause confusion, mistake, and deception among consumers, the public, and the trade as to whether Defendant's canine joint supplements originate from, or are affiliated with, sponsored by, or endorsed by Plaintiff.

61. Prior to Defendant's first use of the infringing TriCOX brand, Defendant was aware of Plaintiff's business and had either actual notice and knowledge, or constructive notice of, Plaintiff's PHYCOX trademark.

62. Defendant's unauthorized use of the infringing TriCOX brand is intended to cause, has caused, and is likely to continue to cause deception, confusion or mistake among consumers as to the origin, sponsorship or approval of the TriCOX branded product and/or to cause confusion or mistake as to any affiliation, connection or association between Plaintiff and Defendant, in violation of 15 U.S.C. § 1114(a).

63. Plaintiff is informed and believes, and on that basis alleges, that Defendant's infringement of Plaintiff's registered PHYCOX trademark as described herein has been and continues to be intentional, willful and without regard to Plaintiff's rights.

64. Plaintiff is informed and believes, and on that basis alleges, that Defendant has gained profits by virtue of its infringement of Plaintiff's registered PHYCOX trademark.

65. Plaintiff will suffer and is suffering irreparable harm from Defendant's infringement of the registered PHYCOX trademark insofar as Plaintiff's invaluable good will is being eroded by Defendant's continuing infringement.

66. Plaintiff has no adequate remedy at law to compensate it for the loss of business reputation, customers, market position, confusion of potential customers and good will flowing from Defendant's infringing activities.

67. Pursuant to 15 U.S.C. § 1116, Plaintiff is entitled to an injunction against Defendant's continuing infringement of Plaintiff's registered PHYCOX trademark. Unless enjoined, Defendant will continue its infringing conduct.

68. Because Defendant's actions have been committed with intent to damage Plaintiff and to confuse and deceive the public, Plaintiff is entitled to treble its actual damages or Defendant's profits, whichever is greater, and to an award of costs and, this being an exceptional case, reasonable attorney's fees pursuant to 15 U.S.C. §§ 1117(a) and 1117(b).

### **COUNT III**

#### **Federal Trademark Dilution 15 U.S.C. § 1125(c)**

69. Plaintiff incorporates and realleges paragraphs 1 through 47 of the Complaint.

70. As a result of the duration and extent of use of use of the PHYCOX trademark, the duration and extent of the advertising and publicity of the PHYCOX trademark, the geographical extent of the distribution of the same, the superior quality of Plaintiff's PHYCOX product, the fact that it is the only patented veterinary product on the

market for inflammation, and the degree of recognition of the PHYCOX trademark, the PHYCOX trademark has achieved an extensive degree of distinctiveness and is a famous trademark.

71. As a result of Defendant's use of the TriCOX brand for its product, Defendant is diluting the distinctive quality of the PHYCOX trademark.

72. Plaintiff will suffer irreparable harm should Defendant's illegal acts be allowed to continue to the great detriment of its reputation and goodwill. Defendant's acts will continue unless enjoined.

#### **COUNT IV**

##### **Common Law Trademark Infringement and Unfair Competition**

73. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-47.

74. Defendant's use of designations that are identical to, or confusingly similar to, Plaintiff's Trademark, Logo, and Trade Dress constitutes use in commerce of a symbol or device, or a false designation of origin, or a false or misleading description or representation with respect to Defendant's goods, which is likely to cause confusion, to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Plaintiff, or as to the origin, sponsorship, or approval of Defendant's goods and services, and Plaintiff has been and is likely to be damaged by Defendant's use of such symbols or device, or false designation of origin, or false or misleading description or representation all in violation of the common law of the State of Florida.

75. Defendant's conduct complained of herein has caused substantial and irreparable damage to Plaintiff and will continue to cause further irreparable damage to

Plaintiff if Defendant is not preliminarily and permanently enjoined by this Court from further violation of Plaintiff's rights and Plaintiff has no adequate remedy at law.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment against Defendant as follows:

A. That Defendant, its officers, directors, agents, attorneys, servants, employees, successors, and assigns, and all other persons in active concert or participation with them, and all those acting under the authority of or in privity with Defendant, be preliminarily and permanently enjoined from using in any manner whatsoever Plaintiff's Trademark, Logo, Trade Dress or any confusingly similar configuration as a trademark to advertise, promote, or identify the source of its goods;

B. That Defendant be ordered to remove all advertisements, promotions, displays, signage, packaging, price lists, catalogs, publications, and articles, or any other materials in its possession or in control of any of their agents, which bear or represent in any way a copy, simulation, colorable imitation, reproduction, photograph, copy, or similar device that is confusingly similar to Plaintiff's Trademark, Logo, and/or Trade Dress and rights alleged above;

C. That Defendant be ordered to account for and pay over to Plaintiff all earnings, profits, receipts and advantages derived by Defendants through the marketing of goods and services in association with the unlawful acts alleged herein;

D. That Defendant be ordered to compensate Plaintiff for the advertising or other expenses necessary to dispel, cure, or counteract any public confusion caused by Defendant's unlawful acts;

E. That Defendant be required to file with this Court and serve on Plaintiff within thirty (30) days after entry of the injunction a report in writing under oath setting forth in detail the manner and form in which Defendant have complied with the injunction;

F. That Defendant be ordered to pay Plaintiff's attorneys' fees and compensatory damages in a sum equal to three (3) times the amount of Plaintiff's actual damages;

G. That Plaintiff be awarded its costs and expenses for bringing and prosecuting this action;

H. That Plaintiff be awarded pre-judgment interest on any monetary award made party of the judgment against Defendant; and

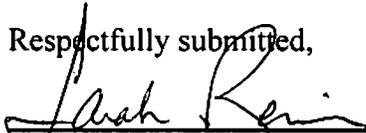
I. That Plaintiff be awarded such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a jury trial on all issues triable by jury.

DATED this 13th day of February, 2013.

Respectfully submitted,

  
\_\_\_\_\_  
Daniel E. Traver (Trial Counsel)

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<sup>1</sup> Motions for Permission to Appear Pro Hac Vice pursuant to Local Rule 2.02, of the Middle District's rules governing the special admission to practice of attorneys are being filed on behalf of Mr. Johnson and Ms. Marsh concurrently herewith.

**Int. Cl.: 5**

**Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52**

**Reg. No. 3,294,575**

**United States Patent and Trademark Office**

**Registered Sep. 18, 2007**

**TRADEMARK  
PRINCIPAL REGISTER**

**PHYCOX**

**PHARMA CHEMIE, INC. (NEBRASKA COR-  
PORATION)  
1877 MIDLAND STREET, P.O. BOX 326  
SYRACUSE, NE 684460326**

**FIRST USE 1-23-2007; IN COMMERCE 1-23-2007.**

**SN 78-269,875. FILED 7-2-2003.**

**FOR: PHARMACEUTICAL PREPARATIONS,  
NAMELY, ANTI-INFLAMMATORIES, IN CLASS 5  
(U.S. CLS. 6, 18, 44, 46, 51 AND 52).**

**IRA J. GOODSAY, EXAMINING ATTORNEY**

**EXHIBIT "A"**

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Phycox® is a joint supplement to help reduce inflammation and discomfort due to normal daily activity. Each formulation of Phycox® contains a natural source of phycocyanin, an extract of blue-green algae offering joint support and stress relief. If your dog has allergies, use Phycox HA, which contains no mammalian protein.

**For: Dogs**



Alternate photos:  
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**Benefits:**

- Contains a unique blend of glucosamine, MSM, boron, and creatine monohydrate to support joint function and healthy bone structure
- Provides enhanced antioxidant protection and Omega-3 Fatty Acids
- Come in a hypoallergenic formulation, which does not contain mammalian protein (no natural liver flavor)
- Available in 3 formulations (soft chews, small bites, and granules)

**How it works:**

The highly concentrated source of phycocyanin helps to support joint health and relieve joint stress by blocking the COX-2 enzyme to reduce inflammation. Phycocyanin also fights against free radicals to help strengthen dog's immune system and protect against cellular damage which can also play a role in degenerative conditions. Both Phycox and Phycox HA work the exact same way, Phycox HA is suitable for dogs with allergies.

**Additional beneficial ingredients in Phycox® include:**

- Glucosamine - helps support joint health by stimulating glycosaminoglycan production which can help cartilage deterioration
- Boron - increases bone strength
- Creatine Monohydrate - an amino acid that may improve muscle strength and help with mobility
- MSM - provides dietary sulfur to maintain healthy cellular membranes, muscles, and joints
- Omega-3 Fatty Acids - reduces inflammation by inhibiting enzymes that can break down cartilage

**Cautions:**

Safe use in pregnant animals or animals intended for breeding has not been proven. If lameness worsens, discontinue use and contact your veterinarian. Administer during or after your dog has eaten to reduce risk of gastrointestinal upset.

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Phycox JS Small Bites (120 soft chews)



**3-PACK Phycox JS Small Bites (360 soft chews)**



Price \$69.99

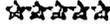
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**PhyCox Soft Chews (10 Soft Chews)**



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**2-PACK PhyCox Soft Chews (240 Soft Chews)**



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**Phycox JS** Small Bites Relieve your dog's joint pain with **Phycox**. **Phycox JS** Small Bites are specially formulated to reduce inflammation and pain in a dog's joints.

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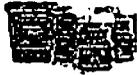
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PhyCox® Soft Chews (formally known as PhyCox JS soft chews) reduce inflammation and discomfort due to normal daily activity. Pl

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Phycox® Soft Chews

PSPC, Inc.

Made in the USA

Contains Phycoyanin, an extract of blue-green algae, which has been shown to function as a Cox-2 inhibitor that is effective in treating arthritis and other inflammatory conditions in animals.

*The highly concentrated source of phycoyanin helps to support joint health and relieve joint stress by blocking the COX-2 enzyme to reduce inflammation.*

Phycoyanin also fights against free radicals to help strengthen your dog's immune system and protect against cellular damage which can also play a role in degenerative conditions.

For small breeds, choose Phycox® Small Bites.

DO NOT GIVE TO CATS.

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OVERALL RATING :★★★★★

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★★★★★ - Friday, July 27, 2012

[Hunting hound now hunting again!](#)

Reviewed By: Kay (Rainbow City, AL)

My 8 year old treeing walker coon hound developed arthritis in her left shoulder so bad it appeared to be a dislocated shoulder with her front left leg carried to the side after a long hunt. X-rays showed no dislocation so she was treated for arthritis. I switched after a 30 day Rx on another medication to Phycox and give it to her everyday along with an anti-inflammatory drug. She is back to her normal gait and doesn't come back from a long hunt with her shoulder appearing as it is dislocated. Very happy with Phycox Soft Chews which she eats like a treat.

★★★★★ - Monday, December 12, 2011

[Phycox Chews](#)

Reviewed By: DJP (Eufaula, AL)

I have a Shih Tzu with arthritic front legs and injured his back leg somehow. He had been on other arthritis medication but when we tried this it worked great! Within a couple days he was playing again and after 2 weeks you couldn't tell anything was wrong. I'm sold!

★★★★★ - Tuesday, November 01, 2011

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**NEW! TriCOX™ TRP Soft Chews**

Joint care formula containing UC-II, astaxanthin, glucosamine, MSM and creatine in a palatable liver flavored soft chew.

TriCOX™ contains a unique blend of ingredients to help support the joint function in many ways. UC-II is a patented form of undenatured collagen that helps maintain a normal immune response to support

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**News**

Introducing TriCOX  
Wednesday, January 23, 2013  
Sogeval Laboratories innovates in the joint support segment with TriCOX.

NEW! **TrICOX™ TRP Soft Chews**

Joint care formula containing UC-II, astaxanthin, glucosamine, MSM and creatine in a palatable liver flavored soft chew.

TrICOX™ contains a unique blend of ingredients to help support the joint function in many ways. UC-II is a patented form of undenatured collagen that helps maintain a normal immune response to prevent auto-immune attacks on the joint.

Doswellia extract helps maintain normal inflammatory response within the joint.

Astaxanthin is a powerful antioxidant that has been proven to be 6,000 times more potent than vitamin C.

TrICOX™ also brings the cartilage building blocks glucosamine and MSM, and muscle support with creatine.

TrICOX™ is formulated using the TRP Soft Chew technology, giving the product unparalleled softness and palatability. It is recommended for managing osteoarthritis. Excellent for elderly dogs, active and working dogs, dogs with joint stiffness and discomfort, or dogs that may have difficulty rising, jumping or taking stairs. Can be used in a protocol with NSAIDs.

For use on dogs.

Available in 60 ct. and 120 ct. soft chews containers.

**Need more information?**  
TrICOX TRP Soft Chews Technical Sheet



**TrICOX**  
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**Douxo Mousse**  
Tuesday, August 29, 2012  
Sogeval is Pleased to Introduce the Douxo Mousse!  
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**Introducing S-Adenoyl Snap Tablets!**  
Monday, June 04, 2012  
Precise dosing at the tip of your finger: Sogeval introduces the Delicament® Snap Tablet Technology.  
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**Sogeval Releases the NEW TRP Technology**  
Friday, March 23, 2012  
Introducing Sogeval's Proprietary TRP Soft Chew.  
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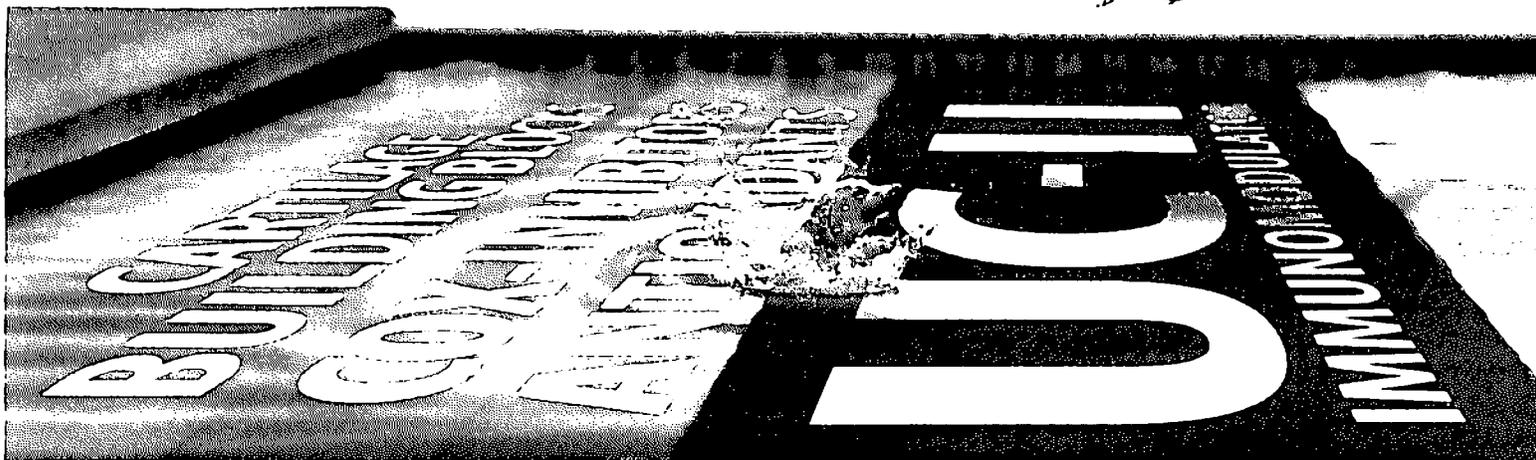
**Sogeval is a proud member of the NASC**  
Wednesday, June 01, 2011  
Sogeval Laboratories is a member of the NASC, the National Animal Supplement Council  
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Introducing

# TriCOX™

## SOFT CHEWS

When it comes to the science behind managing osteoarthritis, we went further.



### BETTER SCIENCE

The proprietary blend of ingredients in TriCOX brings a more complete approach to joint support.

- ✓ **UC-II\*** is a patented collagen extract that desensitizes the immune system and prevents pro-inflammatory attacks on the joints.
- ✓ **BOSWELLIA EXTRACT\*** inhibits the COX-2 enzyme, helps decrease discomfort and stiffness.
- ✓ **ASTAXANTHIN\*** is an antioxidant that is 5,000 times more potent than vitamin C.
- ✓ **BROMELAIN\*** is an enzyme that helps decrease joint swelling.
- ✓ **GLUCOSAMINE and MSM** are cartilage and collagen building blocks.
- ✓ **CREATINE** helps support the muscle function.
- ✓ **OMEGA-3 FATTY ACIDS** help maintain a normal inflammatory response and lubricate joint cells.

\*Only TriCOX contains UC-II, Boswellia Extract, Astaxanthin and Bromelain as a combination of active ingredients.

Properties	Phycox®	TriCOX™
Cartilage Building Blocks	✓	✓
COX-Inhibitors	✓	✓
Antioxidants	✓	✓
Immunomodulator <b>UC-II®</b>		✓

### BETTER RESULTS



TriCOX™ not only brings the essential cartilage building blocks and novel antioxidants to help slow joint degradation, it also targets inflammation and auto-immune attacks on the joint.

In GFP (Ground Force Plate) and clinical studies in dogs, the group receiving UC-II showed a marked reduction in arthritic pain.

- Decreased lameness by **78%<sup>1</sup>**
- Increased peak force by **18%<sup>2</sup>**
- Increased impulse area by **44%<sup>2</sup>**
- Decreased overall pain by **62%<sup>1</sup>**
- Decreased painful limb movement by **91%<sup>1</sup>**

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Exhibit "D"

We're Celebrating the Introduction of TriCOX™ with a **BUY 4 UNITS GET 1 FREE** on ALL Sogeval's leading Joint Care Products: TriCOX, Chondro-Flex® and Synovial-Flex. It's a **20% DISCOUNT!**



# TriCOX™

For managing osteoarthritis. Excellent for elderly dogs, active and working dogs, dogs with joint stiffness and discomfort, or dogs that may have difficulty rising, jumping or taking stairs. Can be used in a protocol with NSAIDs.

NEW TriCOX Soft Chews	SVP	Net SVP with discount
FNTRI001060	<del>\$22.10</del>	\$17.68
FNTRI001120	<del>\$39.96</del>	\$31.97

## Chondro-Flex® and Synovial-Flex

Recommended to support healthy joint function and wellness in dogs.  
Helps alleviate minor discomfort associated with daily exercise and activity.



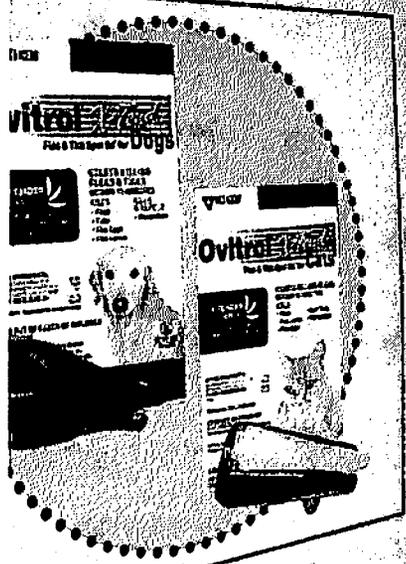
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Reference: 1. T. Nakai, M. Fuda, A. et al. Therapeutic efficacy and safety of undenatured type II collagen (uniplagiagin) or its combination with glucosamine and chondroitin in arthritic dogs. J. Vet. Med. Small Clin. Anim. Clin. 1997; 72(10):1060-1066. 2. Gupta, H.C., Lamendy, T. et al. Comparative therapeutic efficacy and safety of type II collagen (uniplagiagin) to glucosamine and chondroitin in arthritic dogs. J. Vet. Med. Small Clin. Anim. Clin. 2007; 82(11):1147-1154. 3. Gupta, H.C., Lamendy, T. et al. Therapeutic efficacy and safety of undenatured type II collagen (uniplagiagin) to glucosamine and chondroitin in arthritic dogs. J. Vet. Med. Small Clin. Anim. Clin. 2007; 82(11):1147-1154.

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Joint Support Soft Chew with  
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### VANOS by VETCOR

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Vanos is a prescription pet supplement that is the  
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most complete approach to joint support. It contains  
glucosamine, chondroitin sulfate, MSM, and  
omega-3 fatty acids. It also contains natural  
herbs and vitamins to support overall health.

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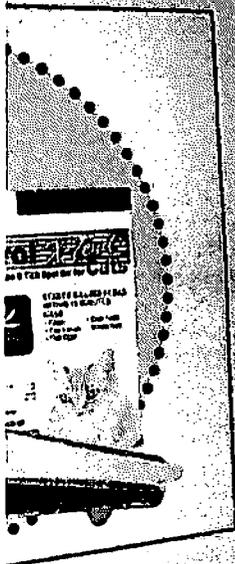
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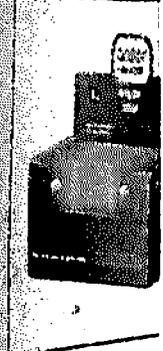
**Indovain 6.5 Injectable ITA Cages**

Indovain 6.5 Injectable ITA Cages are a novel, non-steroidal anti-inflammatory drug (NSAID) that provides effective pain relief and reduces inflammation. It is indicated for the treatment of acute and chronic pain associated with trauma, surgery, and other conditions. Indovain 6.5 Injectable ITA Cages are available in 100 mg and 200 mg vials.

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**Onsior (robenacoxib)**  
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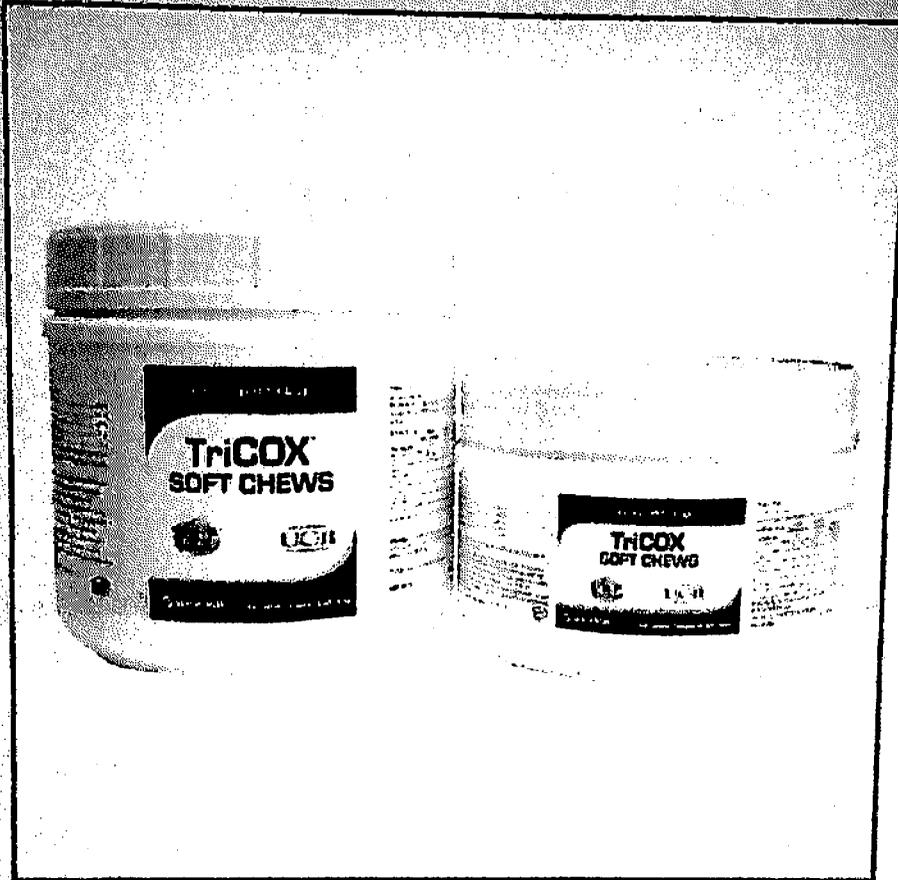
Onsior (robenacoxib) is a non-steroidal anti-inflammatory drug (NSAID) that provides effective pain relief and reduces inflammation. It is indicated for the treatment of acute and chronic pain associated with trauma, surgery, and other conditions. Onsior is available in 125 mg and 250 mg tablets.

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# TriCOX™

by Sogeval Laboratories

Gaylord Booth 213



## Joint Support Soft Chew with immunomodulating agents

TriCOX™ contains a proprietary blend of ingredients that bring a novel and more complete approach to joint support. Only TriCOX™ contains UC-II®, a patented collagen extract that desensitizes the immune system and prevents pro-inflammatory attacks on joint. Boswellia extract, Astaxanthin and Bromelain complete the formula to target COX-2 enzymes, oxidative stress and swelling.

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by Sogeval Laboratories

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# TRICOX-A

<b>Word Mark</b>	TRICOX-A
<b>Goods and Services</b>	IC 005. US 006 018 044 046 051 052. G & S: Canine joint supplements in the nature of soft chews
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	85650854
<b>Filing Date</b>	June 13, 2012
<b>Current Basis</b>	1B
<b>Original Filing Basis</b>	1B
<b>Owner</b>	(APPLICANT) Sogeval Laboratories, Inc. CORPORATION DELAWARE 5605 N. MacArthur Blvd No. 740 Irving TEXAS 75038
<b>Attorney of Record</b>	Daniel R. Frijouf

**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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**TSDR** **ASSIGN Status** **TTAB Status** ( Use the "Back" button of the Internet Browser to return to TESS)

# TRI-COX

<b>Word Mark</b>	<b>TRI-COX</b>
<b>Goods and Services</b>	IC 005. US 006 018 044 046 051 052. G & S: Canine joint supplements in the nature of soft chews
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	85732399
<b>Filing Date</b>	September 19, 2012
<b>Current Basis</b>	1B
<b>Original Filing Basis</b>	1B
<b>Owner</b>	(APPLICANT) Sogeval Laboratories, Inc. CORPORATION DELAWARE 5605 N. MacArthur Blvd No. 740 Irving TEXAS 75038
<b>Attorney of Record</b>	Daniel R. Frijouf

**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

	)	
	)	
PSPC, Inc.	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.: 6:13-cv- 249
	)	
Sogeval Laboratories, Inc.	)	
	)	
Defendant.	)	
	)	

**ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS OF  
SOGEval LABORATORIES, INC.**

Defendant, Sogeval Laboratories, Inc. (“Sogeval”), by and through its attorneys, answers and asserts affirmative defenses and counterclaims to the complaint by Plaintiff, PSPC, Inc. (“PSPC”), as follows:

In responding to the complaint, Sogeval denies all allegations contained therein unless specifically admitted below.

**PARTIES**

1. Sogeval is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.
2. Admitted.

**JURISDICTION AND VENUE**

3. Sogeval admits that the complaint purports to allege causes of action of under the Lanham Act and the common law of the State of Florida. Sogeval denies it is liable to Plaintiff for any such causes of action or has harmed Plaintiff in any way.

4. Sogeval admits that this Court has jurisdiction over the parties and the subject matter of the complaint. Sogeval denies that Sogeval has committed any wrongful acts.

5. Sogeval admits that this Court has personal jurisdiction over Sogeval. Sogeval admits that Sogeval had displays at the North American Veterinary Conference in Orlando, Florida. Sogeval admits that Sogeval has a customer service center in Oldsmar, Florida. Sogeval denies the remaining allegations in paragraph 5. Sogeval specifically denies that it has engaged in any conduct that infringes or has infringed plaintiff's trademarks or trade dress, or otherwise caused any harm to plaintiff.

6. Sogeval admits that venue is proper in this Court and that Sogeval transacts business in this district. Sogeval denies the remaining allegations in paragraph 6. Sogeval specifically denies that it has engaged in any conduct that infringes or has infringed plaintiff's trademarks or trade dress, or otherwise caused any harm to plaintiff.

#### PLAINTIFF'S TRADEMARKS

7. Sogeval is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

8. Sogeval admits PSPC alleges ownership of U.S. Patent No. 7025965. Sogeval is without knowledge or information sufficient to form a belief as to the validity or enforceability of U.S. Patent No. 7025965 and therefore denies the same.

9. Sogeval admits that the U.S. Trademark Office database reflects that PSPC is the listed owner of U.S. Registration No. 3,294,575. Sogeval denies that PSPC has any rights in and to the PHYCOX name. Sogeval denies that U.S. Registration No. 3,294,575 is valid and enforceable.

10. Sogeval admits that the U.S. Trademark Office database reflects that the U.S. Trademark Office acknowledged PSPC's combined Affidavit under Sections 8 & 15 of the Trademark Act. Sogeval denies that U.S. Registration No. 3,294,575 is valid, enforceable and/or incontestable.

11. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

12. Sogeval denies the allegations of this paragraph.

13. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies that PSPC has any rights in and to the alleged PHYCOX trade dress. Sogeval is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

14. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval admits that some of PSPC's labels include the color green. Sogeval denies that PSPC has any trade dress rights. Sogeval denies that PSPC has any trade dress rights in and to the color green.

15. Sogeval admits that some of the containers upon which the PHYCOX product label is placed are white cylinders. Sogeval denies that PSPC has any trade dress rights. Sogeval denies that PSPC has any trade dress rights in and to cylinders and/or white cylinders.

16. Sogeval admits that some of PSPC's container lids have vertical ribs. Sogeval denies that PSPC has any trade dress rights. Sogeval denies that PSPC has any trade dress rights in and to vertical ribs.

17. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph. Sogeval denies that PSPC has any trade dress rights.

18. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph. Sogeval denies that PSPC has any trade dress rights.

19. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph. Sogeval denies that PSPC has any trade dress rights.

20. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph. Sogeval denies that PSPC has any trade dress rights.

21. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph. Sogeval denies that PSPC has any trade dress rights.

22. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph. Sogeval denies that PSPC has any trade dress rights.

23. Sogeval admits that Exhibit B purports to show web pages offering PHYCOX® products for sale on various websites. Sogeval denies any characterization of the documents in Exhibit B. Sogeval is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

24. Sogeval is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

25. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

DEFENDANT'S ACTIVITIES

26. Admitted.

27. Sogeval admits that in 2009, Sogeval approached PSPC about becoming a distributor of PHYCOX products. Sogeval denies the remaining allegations in paragraph 27.

28. Admitted.

29. Sogeval admits that in 2010, Sogeval approached PSPC about becoming a nonexclusive distributor of a soft chew product that contains phycocyanin. Sogeval denies the remaining allegations in paragraph 29.

30. Admitted.

31. Denied.

32. Sogeval is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the same.

33. Admitted that the illustration purports to be a photograph of Sogeval's TriCOX product.

34. Admitted that Exhibit C purports to be screen shots from Sogeval's website. Sogeval denies the remaining allegations of paragraph 34. Sogeval denies that logo infringes on any of PSPC's rights.

35. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph. Sogeval denies that PSPC has any trade dress rights.

36. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

37. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph. Sogeval denies that PSPC has any trade dress rights.

38. Sogeval admits that its TriCOX product was launched on or about January 1, 2013, and Sogeval's TriCOX product comprises a nutritional supplement to support healthy joint function in dogs with osteoarthritis. Sogeval denies the remaining allegations of paragraph 38.

39. Sogeval admits that Exhibit D purports to be copies of Sogeval's advertisements.

40. Sogeval admits that Sogeval promoted Sogeval's TriCOX product at the 2013 North American Veterinary Conference in Orlando Florida.

41. Sogeval admits that Exhibit E purports to be photographs of Sogeval's signage at the 2013 North American Veterinary Conference in Orlando, Florida.

42. Sogeval admits that Sogeval has offered for sale Sogeval's TriCOX product in this judicial district. Sogeval denies the remaining allegations of paragraph 42.

43. Sogeval admits Sogeval had knowledge of PSPC's use of the mark PHYCOX at the time Sogeval adopted and began use of the mark TriCOX. By way of

further answer, Sogeval had knowledge of other third party use of the mark PHYCOX at the time Sogeval adopted and began use of the mark TriCOX. Sogeval also had knowledge of additional third party use of trademarks which incorporate the wording COX and which are used in conjunction with animal health supplements, registered drugs and related products. Sogeval denies the remaining allegations of paragraph 43.

44. Sogeval admits that on June 13, 2012, Sogeval filed U.S. Trademark Application Serial No. 85650854 for the mark TRICOX-A. Sogeval is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

45. Sogeval admits that Exhibit F purports to be a copy of a print-out from the U.S. Trademark Office's TESS database showing the particulars of Sogeval's TRICOX-A application. Sogeval admits that the U.S. Trademark Office has not yet issued a registration for Application Serial No. 85650854. By way of further answer, the U.S. Trademark Office has conducted a search of the U.S. Trademark Office's database and has concluded that no registered or pending marks would bar registration of Sogeval's TRICOX-A mark. By way of further answer, the U.S. Trademark Office did not cite Registration No. 3294575 for the mark PHYCOX purportedly owned by PSPC and did not cite Registration Nos. 3493763, 3511215 and 3511219 for the mark PHYCOX-JS, used in connection with veterinary nutritional supplements for companion animals.

46. Sogeval admits that on September 19, 2012, Sogeval filed U.S. Trademark Application Serial No. 85732399 for the mark TRI-COX. Sogeval is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

47. Sogeval admits that Exhibit G purports to be a copy of a print-out from the U.S. Trademark Office's TESS database showing the particulars of Sogeval's TRI-COX application. Sogeval admits that the U.S. Trademark Office has not yet issued a registration for Application Serial No. 85732399. By way of further answer, the U.S. Trademark Office has conducted a search of the U.S. Trademark Office's database and has concluded that no registered or pending marks would bar registration of Sogeval's TRI-COX mark. By way of further answer, the U.S. Trademark Office did not cite Registration No. 3294575 for the mark PHYCOX purportedly owned by PSPC and did not cite Registration Nos. 3493763, 3511215 and 3511219 for the mark PHYCOX-JS, used in connection with veterinary nutritional supplements for companion animals.

COUNT I

48. Sogeval incorporates Sogeval's answers to the allegations re-alleged, as if set forth fully herein.

49. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph. Sogeval denies that PSPC has any trade dress rights.

50. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph. Sogeval denies that PSPC has any trade dress rights.

51. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

52. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph. Sogeval denies that PSPC has any trade dress rights.

53. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

54. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

55. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph. Sogeval denies that PSPC has any trade dress rights.

56. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

## COUNT II

57. Sogeval incorporates Sogeval's answers to the allegations re-alleged, as if set forth fully herein.

58. Sogeval admits that the U.S. Trademark Office database reflects that PSPC is the listed owner of U.S. Registration No. 3294575 and the U.S. Trademark Office acknowledged PSPC's combined Affidavit under Sections 8 & 15 of the Trademark Act. Sogeval denies that PSPC has any rights in and to the PHYCOX name. Sogeval denies that U.S. Registration No. 3294575 is valid, enforceable and/or incontestable.

59. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

60. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

61. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

62. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

63. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

64. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

65. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

66. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

67. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

68. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

### COUNT III

69. Sogeval incorporates Sogeval's answers to the allegations re-alleged, as if set forth fully herein.

70. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

71. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

72. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph.

#### COUNT IV

73. Sogeval incorporates Sogeval's answers to the allegations re-alleged, as if set forth fully herein.

74. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph. Sogeval denies that PSpC has any trade dress rights.

75. Denied as a conclusion of law to which no response is required. To the extent a response is required, Sogeval denies the allegations of this paragraph. Sogeval denies that PSpC has any trade dress rights.

#### PRAYER FOR RELIEF

Sogeval further denies the entitlement of PSpC to any of the relief requested in the WHEREFORE clause.

#### AFFIRMATIVE DEFENSES

Sogeval asserts the following affirmative defenses to the complaint filed by Plaintiff:

##### First Affirmative Defense

The Complaint, and each cause of action thereof, fails to state a cause of action upon which relief may be granted.

Second Affirmative Defense

PSPC's claims are barred in whole or in part by the doctrine of estoppel, unclean hands, waiver and/or acquiescence.

Third Affirmative Defense

PSPC's alleged trademarks do not designate a single source.

Fourth Affirmative Defense

PSPC's alleged trademark is diluted due to third-party use and is entitled to only the most narrow scope of protection.

Fifth Affirmative Defense

PSPC's alleged trade dress is generic.

Sixth Affirmative Defense

PSPC's alleged trade dress is not distinctive.

Seventh Affirmative Defense

PSPC's alleged trade dress is functional.

Eight Affirmative Defense

PSPC's alleged trade dress is so diluted due to third-party use that it is entitled to only the most narrow scope of protection.

Ninth Affirmative Defense

Sogeval maintains that PSPC does not own rights in and to the trademarks and trade dress at issue but reserves, in the alternative, the defense that PSPC has granted an uncontrolled or naked license, by failing to exercise any quality control whatsoever over its licensee(s), and in so doing has abandoned its trademarks and trade dress, and is therefore estopped from asserting its rights as to its alleged trademarks and trade dress.

Tenth Affirmative Defense

United States Trademark Registration No. 3294575 was improperly registered by the U.S. Trademark Office and is not valid. United States Trademark Registration No. 3294575 was also improperly renewed under Sections 8 & 15 of the Trademark Act and is neither valid nor incontestable.

Eleventh Affirmative Defense

The scope of PSPC's trademark rights, if any, are not broad enough to preclude Sogeval's use and registration of Sogeval's mark.

Twelfth Affirmative Defense

PSPC has abandoned its rights in the PHYCOX name and PSPC's alleged trade dress and is therefore estopped from asserting its rights as to its alleged trademark and trade dress.

Thirteenth Affirmative Defense

The wording COX is a generic designation which is incapable of distinguishing the goods of PSPC from those of others.

Fourteenth Affirmative Defense

The wording COX is descriptive and is incapable of distinguishing the goods of PSPC from those of others.

Fifteenth Affirmative Defense

The wording COX is so diluted due to third-party use that it is entitled to only the most narrow scope of protection.

Sixteenth Affirmative Defense

The word PHYCOX has become generic.

Sogeval presently has insufficient knowledge or information upon which to form a belief as to whether it has additional, as yet unstated, affirmative defenses and claims for relief available. Sogeval reserves the right to assert additional affirmative defenses and other claims for relief for which Sogeval has developed factual support pending the outcome of discovery or otherwise.

WHEREFORE, Sogeval respectfully requests that this Court dismiss PSPC's complaint in each count therein with prejudice at PSPC's cost, award Sogeval its attorneys' fees and costs, and grant such other relief as the Court deems appropriate under the circumstances.

#### COUNTERCLAIMS

Defendant, Sogeval Laboratories, Inc., by and through its attorneys, for its counterclaims alleges and states as follows:

#### PARTIES

1. Defendant, Counter-Plaintiff, Sogeval Laboratories, Inc. is a corporation organized and existing under the laws of Delaware and has a principal place of business in Irving, Texas.
2. Upon information and belief, Plaintiff, Counter-Defendant, PSPC, Inc., is a corporation organized and existing under the laws of Florida and has a principal place of business in Melbourne, Florida.

#### JURISDICTION AND VENUE

3. These counterclaims arise under the trademark laws of the United States, Title 15 of the United States Code.
4. Subject matter jurisdiction of this Court is founded upon *15 U.S.C. §§ 1119 and 1121*, *28 U.S.C. §§ 1331 and 1338* and by the doctrine of pendant jurisdiction.
5. The Court has personal jurisdiction over the parties and venue lies in this judicial district pursuant to *28 U.S.C. § 1391*. Furthermore, PSPC has consented to personal jurisdiction and venue by commencing the present action in this judicial district, as set forth in PSPC's complaint.

#### BACKGROUND FACTS

6. Sogeval is a pharmaceutical company that develops, manufactures and markets medicines and veterinary specialties for animals. Sogeval has more than one-hundred and fifty (150) products in areas as diverse as dermatology, nutritional supplements, joint support and dental care. Sogeval's products include a line of nutritional supplements, in the nature of soft chews, for joint care in canines.
7. Sogeval's canine joint care product line includes SYNOVIAL-FLEX. The SYNOVIAL-FLEX soft chew is formulated to support healthy joint flexibility and function in dogs. The packaging of the SYNOVIAL-FLEX soft chew includes the SYNOVIAL-FLEX trademark in black lettering on a white background with the wording "SOFT CHEWS" in the same color and style font beneath. Furthermore, the packaging of the SYNOVIAL-FLEX soft chew prominently displays the SOGEVAL trademark, Sogeval's TRP logo and Sogeval's Wave Design trade dress in the color blue. Please see Exhibit A.

8. Sogeval's canine joint care product line includes CHONDRO-FLEX. The CHONDRO-FLEX soft chew formulation contains Chondroitin Sulfate and supports healthy joint flexibility and function in dogs. The packaging of the CHONDRO-FLEX soft chew includes the CHONDRO-FLEX trademark in black lettering on a white background with the wording "SOFT CHEWS" in the same color and style font beneath. Furthermore, the packaging of the CHONDRO-FLEX soft chew prominently displays the SOGEVAL trademark, Sogeval's TRP logo and Sogeval's Wave Design trade dress in the color red. Please see Exhibit B.
9. Sogeval's canine joint care product line includes TriCOX. The TriCOX soft chew was formulated with three (3) main ingredients and is designed to support healthy joint function in dogs with osteoarthritis by blocking the COX-2 enzyme. The packaging of the TriCOX soft chew includes the TriCOX trademark in black lettering on a white background with the wording "SOFT CHEWS" in the same color and style font beneath. Furthermore, the packaging of the TriCOX soft chew prominently displays the SOGEVAL trademark, Sogeval's TRP logo and Sogeval's Wave Design trade dress in the color green. Please see Exhibit C.
10. On September 19, 2012, Sogeval filed U.S. Trademark Application Serial No. 85732399, for the mark TRI-COX, in conjunction with canine joint supplements in the nature of soft chews. Please see Exhibit D.
11. Upon information and belief, for a period of time long prior to the allegations of trademark and trade dress infringement claimed by PSPC in this action, PSPC has permitted third party use of (a) the PHYCOX name, (b) PSPC's alleged trade

dress and (c) other marks incorporating the wording COX, all without objection and without license, in connection with veterinary nutritional supplements for animals and related products.

12. Upon information and belief, for a period of time long prior to the allegations of trademark and trade dress infringement claimed by PSPC in this action, PSPC has consented to and permitted a third party to federally register the PHYCOX-JS name in connection with veterinary nutritional supplements for companion animals. Please see Registration Nos. 3493763, 3511215 and 3511219 attached hereto as Exhibits E, F & G.
13. United States Registration Nos. 3493763, 3511215 and 3511219 for the mark PHYCOX-JS were owned by IVX Animal Health Inc., a Delaware Corporation. Upon Information and belief, U.S. Registration Nos. 3493763, 3511215 and 3511219 existed on the Principal Register with PSPC's PHYCOX Trademark Registration, without conflict of any kind, for over four (4) years.
14. On or about February 27, 2013, and subsequent to the filing of this proceeding, PSPC recorded a trademark assignment with the U.S. Trademark Office, which transferred ownership of Registration Nos. 3493763, 3511215 and 3511219 to PSPC.
15. On March 8, 2013, PSPC surrendered Registration Nos. 3493763, 3511215 and 3511219 for cancellation.
16. As a result of PSPC having consciously failed to police the use of the PHYCOX name, by third parties, it has been abandoned, has ceded to the public, and is unenforceable.

17. As a result of PSPC having consciously failed to police the use of PSPC's alleged trade dress, by third parties, the alleged trade dress is not distinctive, has been abandoned, has ceded to the public, and is unenforceable.
18. PSPC's alleged trade dress is functional.
19. As a result of PSPC having consciously failed to police the use of marks incorporating the wording COX, by third parties, PSPC has abandoned any rights it may have had in the wording COX.

COUNTERCLAIM 1  
DECLARATORY JUDGEMENT OF UNENFORCEABILITY

20. Sogeval repeats and realleges paragraphs 1-19 of the Counterclaims as if fully set forth herein.
21. This is a counterclaim for declaratory judgment under 28 *U.S.C.* § 2201 and 2202 that PSPC'S PHYCOX name and PSPC's alleged trade dress used in connection with pharmaceutical preparations, namely, anti-inflammatories and related products are unenforceable due to abandonment. This counterclaim arises from an actual controversy between the parties concerning PSPC's right to enforce rights in the PHYCOX name and PSPC's alleged trade dress.
22. Upon information and belief, PSPC has knowingly permitted the use of the name PHYCOX and PSPC's alleged trade dress by third parties throughout the period in which PSPC has claimed exclusive use of its PHYCOX mark and its alleged trade dress.
23. Upon information and belief, PSPC has knowingly permitted the use of third party marks which incorporate the wording COX.

24. Furthermore, PSPC has consented to, and knowingly permitted, the U.S. Trademark Registration of the mark PHYCOX-JS by third parties.
25. Upon information and belief, for a period of time long prior to the allegations of trademark and trade dress infringement claimed by PSPC in this action, PSPC has permitted the third party use of the PHYCOX name and PSPC's alleged trade dress, without objection and without license, on veterinary nutritional supplements and related products, has consciously failed to police the use of the PHYCOX name and PSPC trade dress in a manner consistent with its current position that the TriCox trademark and Sogeval trade dress create a likelihood of confusion in the market place.
26. By reason of its own acts, PSPC has abandoned any claim of exclusive right to use the PHYCOX name and PSPC's alleged trade dress and to prevent Sogeval from using the TriCOX mark and Sogeval's trade dress.
27. Pursuant to *15 U.S.C. § 1127*, through its course of conduct in actively permitting or acquiescing to the use by third parties of the PHYCOX name and the PSPC trade dress, PSPC has caused the name and trade dress to lose its significance as a trademark and to indicate a single source and has become abandoned by operation of law.
28. For the foregoing reasons, the Court should declare that PSPC has abandoned any rights that it may have had in the PHYCOX name and PSPC's alleged trade dress relative to the sale of pharmaceutical preparations, namely, anti-inflammatories, nutritional supplements for joint care in dogs and related products.

COUNTERCLAIM 2  
DECLARATION THAT PSPC TRADE DRESS IS NON-PROTECTIBLE

29. Sogeval repeats and realleges paragraphs 1-28 of the Counterclaims as if fully set forth herein.
30. PSPC's trade dress is not distinctive.
31. PSPC's trade dress has not acquired secondary meaning.
32. PSPC's trade dress is functional.
33. Sogeval seeks an Order from this Court declaring that the trade dress asserted by PSPC is not protectible either because it is not distinctive or because it has acquired no secondary meaning or because the trade dress is functional.

COUNTERCLAIM 3  
CANCELLATION OF U.S. REGISTRATION NO. 3294575

34. Sogeval repeats and realleges paragraphs 1-33 of the Counterclaims as if fully set forth herein.
35. Pursuant to *15 U.S.C. § 1119*, this Court is authorized and empowered to rectify the Principal Register and to cancel those registrations which include the now abandoned and generic PHYCOX name of Registration No. 3294575.
36. As a ground for cancellation of Registration No. 3294575, the name PHYCOX has been abandoned and cannot function as a trademark.
37. Said registration should be struck from the Principal Register and cancelled, thereby preventing PSPC from asserting any claim to the validity or exclusive right to use the PHYCOX name under the Federal Lanham Act.

38. Accordingly, Sogeval seeks an order of this Court cancelling U.S. Registration No. 3294575.

**DEMAND FOR JURY TRIAL**

DEFENDANT DEMANDS A TRIAL BY JURY.

WHEREFORE, Sogeval prays that this Court enter judgment against PSPC:

- (1) For a declaration that the PHYCOX mark has been abandoned;
- (2) For a declaration that the PSPC's trade dress has been abandoned;
- (3) For a declaration that the PSPC's trade dress is functional;
- (4) For a declaration that the PSPC's trade dress is not distinctive;
- (5) For the Clerk of this Court to notify the Director of Patents and Trademarks pursuant to *15 U.S.C. § 1119* to rectify the Principal Register by order of this Court to remove there from and to cancel United States Trademark Registration No. 3294575;
- (6) For a declaration that Sogeval is permitted to use the TriCOX mark and Sogeval's trade dress without protest from PSPC and for a declaration that PSPC is enjoined from any protest of such use by Sogeval;
- (7) For an award of attorneys' fees under *15 U.S.C. § 1117* as the prevailing party in an exceptional case; and
- (8) For such other and further relief as this Court deems just and proper.

Frijouf, Rust & Pyle, P.A.



April 25, 2013

Date

---

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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2013, I presented the foregoing to the Clerk of the Court for filing and uploading to the Case Management/Electronic Case Filing (“CM/ECF”) system which will send a Notice of Electronic Filing to the following CM/ECF participants:

Daniel E. Traver  
Sarah P. L. Reiner  
Gray Robinson, P.A.  
301 East Pine Street Suite 1400  
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Orlando Florida 32802-3068

Glenn Johnson  
Wendy K. Marsh  
Nyemaster Goode, P.C.  
700 Walnut Street, Suite 1600

Des Moines, Iowa 50309

A handwritten signature in black ink, appearing to read "Frijouf". The signature is stylized with a large initial "F" and a long, sweeping underline.

---

Daniel R. Frijouf

**EXHIBIT A**



**EXHIBIT B**



**EXHIBIT C**



# EXHIBIT D

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## TRI-COX

<b>Word Mark</b>	<b>TRI-COX</b>
<b>Goods and Services</b>	IC 005. US 006 018 044 046 051 052. G & S: Canine joint supplements in the nature of soft chews
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	85732399
<b>Filing Date</b>	September 19, 2012
<b>Current Basis</b>	1B
<b>Original Filing Basis</b>	1B
<b>Owner</b>	(APPLICANT) Sogeval Laboratories, Inc. CORPORATION DELAWARE 5605 N. MacArthur Blvd No. 740 Irving TEXAS 75038
<b>Attorney of Record</b>	Daniel R. Frijouf
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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# PHYCOX-JS

**Word Mark** PHYCOX-JS  
**Goods and Services** IC 005. US 006 018 044 046 051 052. G & S: VETERINARY NUTRITIONAL SUPPLEMENTS FOR COMPANION ANIMALS. FIRST USE: 20080105. FIRST USE IN COMMERCE: 20080105  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Trademark Search Facility Classification Code** LETS-2 JS Two letters or combinations of multiples of two letters NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks  
**Serial Number** 77334329  
**Filing Date** November 20, 2007  
**Current Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** April 8, 2008  
**Registration Number** 3493763  
**Registration Date** August 26, 2008

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**Owner** (REGISTRANT) IVX ANIMAL HEALTH, INC. CORPORATION DELAWARE 3915 South 48th Street  
Terrace St. Joseph MISSOURI 64503

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** Wendy K. Marsh

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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<b>Word Mark</b>	PHYCOX-JS SOFT CHEWS
<b>Goods and Services</b>	IC 005, US 006 018 044 046 051 052, G & S: VETERINARY NUTRITIONAL SUPPLEMENTS FOR COMPANION ANIMALS. FIRST USE: 20080105. FIRST USE IN COMMERCE: 20080105
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	26.01.21 - Circles that are totally or partially shaded. 26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s) 26.17.05 - Bands, horizontal; Bars, horizontal; Horizontal line(s), band(s) or bar(s); Lines, horizontal
<b>Trademark Search Facility Classification Code</b>	LETS-2 JS Two letters or combinations of multiples of two letters LETTER-3-OR-MORE PHYCOX Combination of three or more letters as part of the mark NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks SHAPES-BAR-BANDS Designs with bar, bands or lines SHAPES-COLORS-3-OR-MORE Design listing or lined for three or more colors
<b>Serial Number</b>	77334033
<b>Filing Date</b>	November 20, 2007
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	July 22, 2008
<b>Registration Number</b>	3511215

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**Registration Date** October 7, 2008

**Owner** (REGISTRANT) IVX ANIMAL HEALTH, INC. CORPORATION DELAWARE 3915 South 48th Street Terrace St. Joseph MISSOURI 64503

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** Wendy K. Marsh

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE SOFT CHEWS APART FROM THE MARK AS SHOWN

**Description of Mark** The color(s) black, green and white is/are claimed as a feature of the mark. The mark consists of the wording "**PHYCOX**-JS SOFT CHEWS", a hyphen, a partially colored circle and three bands under the letters "phyc". The color(s) black appears in the letters "**phycox**", the hyphen and the wording soft chews, the color white appears in the letters "JS" and the green appears in the circle and the three lines.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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<b>Word Mark</b>	PHYCOX-JS SOFT CHEWS
<b>Goods and Services</b>	IC 005, US 006 018 044 046 051 052, G & S: VETERINARY NUTRITIONAL SUPPLEMENTS FOR COMPANION ANIMALS. FIRST USE: 20080105. FIRST USE IN COMMERCE: 20080105
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	26.01.21 - Circles that are totally or partially shaded. 26.17.05 - Bands, horizontal; Bars, horizontal; Horizontal line(s), band(s) or bar(s); Lines, horizontal
<b>Trademark Search Facility Classification Code</b>	LETS-2 JS Two letters or combinations of multiples of two letters NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks SHAPES-BAR-BANDS Designs with bar, bands or lines SHAPES-CIRCLE Circle figures or designs including semi-circles and incomplete circles
<b>Serial Number</b>	77334301
<b>Filing Date</b>	November 20, 2007
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	July 22, 2008
<b>Registration Number</b>	3511219
<b>Registration Date</b>	October 7, 2008

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**Owner** (REGISTRANT) IVX ANIMAL HEALTH, INC. CORPORATION DELAWARE 3915 South 48th Street  
Terrace St. Joseph MISSOURI 64503

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** Wendy K. Marsh

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE SOFT CHEWS APART FROM THE MARK AS SHOWN

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of the wording "PHYCOX-JS SOFT CHEWS", a hyphen, a partially colored circle and three bands under the letters "phyc".

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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