

ESTTA Tracking number: **ESTTA182550**

Filing date: **12/20/2007**

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

Proceeding	92047581
Party	Plaintiff Actibiol, S.A.
Correspondence Address	Gary J. Nelson Christie, Parker & Hale, LLP P.O. Box 7068 Pasadena, CA 91109-7068 UNITED STATES pto@cph.com
Submission	Motion for Summary Judgment
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Date	12/20/2007
Attachments	Actibiol SA MSJ.pdf ( 63 pages )(2017170 bytes )

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

ACTIBIOL, S.A.

Petitioner,

v.

MOR-NUTECH, INC.

Registrant.

Cancellation No. 92047581

T.M. : CAPSOL-T  
R.N. : 3,149,821

**MOTION FOR SUMMARY  
JUDGMENT**

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**PETITIONER ACTIBIOL, S.A.'S MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

Registrant's trademark registration for CAPSOL-T is void for two separate reasons, each requiring the registration to be cancelled. First, the party who filed the Statement of Use for the CAPSOL-T registration was not the owner of the application at the time the Statement of Use was filed. Second, the intent-to-use application from which the CAPSOL-T registration matured was assigned in violation of the prohibition against assignments of intent-to-use applications contained in 15 U.S.C. §1060(a)(1). Each of these defects causes the registration to be void.

Accordingly, Petitioner Actibiol, S.A. ("Actibiol") moves for summary judgment on its fourth and fifth grounds<sup>1</sup> for cancellation, as plead in its Petition to Cancel, and requests that the Trademark Trial and Appeal Board ("the Board") find the CAPSOL-T registration to be void and grant Petitioner's petition for cancellation. Actibiol also requests that proceedings be suspended pending the disposition of this motion.

**II. STATEMENT OF FACTS**

U.S. Trademark Registration No. 3,149,821 ("the '821 Registration") for the mark CAPSOL-T is currently owned by Registrant Mor-Nutech, Inc. ("Mor-Nutech"). Declaration of Tiffany Parcher, Exhibit A17.<sup>2</sup> However, Mor-Nutech was not the original applicant. U.S. Trademark Application Serial No. 78/528,700 ("the '700 Application"), from which the '821 Registration issued, was filed by two individuals, Dorothy and James Morre ("Applicants"), on December 7, 2004. Exhibit A1. These two individuals filed their application under section 1(b), alleging a bona fide intent to use the mark in commerce. Exhibit A1.

While the application was still pending, the Applicants executed an assignment of the

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<sup>1</sup> Actibiol notes that this motion focuses only on its fourth and fifth grounds for cancellation, as set out in the Petition to Cancel. This motion does not address Actibiol's first, second, or third grounds for cancellation. Actibiol intends to address those grounds after further discovery.

<sup>2</sup> References to Exhibits in this Motion refer to the Exhibits attached to the Parcher Declaration.

intent-to-use application on June 8, 2006, assigning the application to Mor-Nutech. Exhibit B3. A Statement of Use had not yet been filed in the '700 Application, and therefore the application that was assigned on June 8, 2006 was an intent-to-use application under section 1(b). Exhibit A11.

On June 26, 2006, the Applicants, Dorothy and James Morre, submitted a Statement of Use attesting to their use of the trademark. Exhibit A11. These two individuals had already assigned their rights to this trademark application two weeks earlier, and were therefore no longer the owner of the application when they signed and filed this Statement of Use.

As the above summary makes clear, the relevant facts for the purposes of this motion are contained within the file history of the '821 registration. These facts are therefore contained within the public record, and are not in dispute. Based on these undisputed facts, Actibiol requests that the Board grant the present motion for summary judgment.

### **III. STATEMENT OF UNDISPUTED FACTS**

The following facts are undisputed:

1. The '700 Application was filed by two individuals, Dorothy and James Morre. Exhibit A1; Exhibit F2 (Admission No. 23).
2. There was no discrepancy in the '700 Application as to the identity of the applicant; Dorothy and James Morre were the two individual applicants. Exhibit A1.
3. The '700 Application was filed under section 1(b). Exhibit A1; Exhibit F2 (Admission No. 24).
4. Dorothy and James Morre assigned the '700 Application to Mor-Nutech on June 8, 2006. Exhibit B3; Exhibit F3 (Admission No. 25).
5. Dorothy and James Morre submitted a Statement of Use attesting to their use of the trademark on June 26, 2006. Exhibit A11-12; Exhibit F3 (Admission No. 26).
6. Mor-Nutech is an Indiana corporation that was created on February 23, 2004. Exhibit C1.

7. James Morre is the President of Mor-Nutech. Exhibit C1.
8. Mor-Nutech entered into a license agreement with Scientific Motive Systems, Inc. ("SMS") on August 24, 2004 relating to two other trademarks. Exhibit D1-4.
9. Mor-Nutech amended its license agreement with SMS on September 28, 2006, licensing SMS to use the trademark "CAPSOL-T", and backdating the agreement to make it retroactively effective to the date of first use of CAPSOL-T. Exhibit D6.
10. The only use of the CAPSOL-T trademark has been by SMS. Exhibit E2 (Response to Interrogatory No. 13).
11. The first use of CAPSOL-T was on June 5, 2006. Exhibit A11.

#### IV. LEGAL STANDARD ON SUMMARY JUDGMENT

Summary judgment is an appropriate method for quickly disposing of cases that lack genuine dispute. *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1562 (Fed. Cir. 1987) (affirming summary judgment granted by TTAB and holding that "summary judgment may no longer be regarded as a disfavored procedural shortcut. Rather, the Court has counseled that summary judgment is a salutary method of disposition 'designed to secure the just, speedy and inexpensive determination of every action.'"), quoting *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). "[T]he Board does not hesitate to dispose of cases on summary judgment when appropriate." TTAB Manual of Procedure (hereinafter "TBMP") § 528.01.

To succeed on summary judgment, the moving party must "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. Proc. 56(c); *Celotex Corp.*, 477 U.S. at 322; TBMP § 528.01. In response, "the nonmoving party may not rest on mere denials or conclusory assertions, but rather must proffer countering evidence . . . showing that there is a genuine factual dispute for trial." TBMP § 528.01; see also Fed. R. Civ. Proc. 56(e); *Sweats Fashions*, 833 F.2d at 1564 (mere conclusory statements and denials not sufficient).

The facts that are relevant to this motion are contained within the file history of the '821

Registration, which is a matter of public record. As a result, there cannot be any genuine issues of fact precluding summary judgment on these facts. The only issue for the Board to consider on summary judgment is the legal conclusion to be drawn from these facts. Actibiol respectfully requests that the Board conclude that the '821 Registration must be cancelled in view of the defects in the '700 Application.

V. **THE FACTS SHOW THAT APPLICANTS FILED AN IMPROPER STATEMENT OF USE**

"The party filing the statement of use must be the owner of the mark at the time the statement is filed." Trademark Manual of Examining Procedure ("TMEP") §1109.10. "If the party who filed the statement of use was not the owner of the mark at the time of filing, the true owner may not file a substitute statement of use unless there is time remaining in the statutory filing period. ...Therefore, if the party filing the statement of use is not the owner of the mark at the time the statement of use is filed, the examining attorney cannot accept the statement of use."

*Id.*

This rule applies in the present case, where the two individuals, Dorothy and James Morre, were not the owner of the '700 Application when they filed the Statement of Use. The individuals assigned the application to Mor-Nutech on June 8, 2006, (Exhibit B3) and then they filed a Statement of Use on June 26, 2006 (Exhibit A11). Because the two individuals filing the statement of use were not the owner at the time the statement was filed, the examining attorney should not have accepted the statement of use.

The Trademark Office has enforced this rule before when a Statement of Use was filed in the name of the wrong party. In *In re Colombo, Inc.*, 33 U.S.P.Q.2D 1530 (Commr. of Patents and Trademarks 1994), the application was deemed abandoned because the original applicant signed a Statement of Use after assigning the application to another entity. The original applicant, CMHC, Inc., filed the application in March of 1991. CMHC executed an assignment to Colombo, Inc. on December 20, 1991, and recorded this assignment with the Trademark Office ten days later. Subsequently, the application was allowed on June 23, 1992, and a

Statement of Use was due within six months. *Id.* at \*1-2.

On November 30, 1992, Colombo, Inc. filed a Statement of Use signed by "James E. Richards, Vice President." CMHC was listed in the heading of the paper as the applicant. Colombo, Inc. was not listed. A second Statement of Use in the name of Colombo, Inc. was filed on February 3, 1993. *Id.* at \*2.

On these facts, the examiner found the application to be abandoned. The first Statement of Use was invalid because it was not signed by the applicant, and the second Statement of Use was filed after the six month deadline. *Id.*

Colombo, Inc. appealed, arguing that the first Statement of Use should be accepted because James Richards was an officer of Colombo, and the name CMHC was simply listed incorrectly in the heading. The Commissioner affirmed the examiner's position, explaining that "[t]he fact that the person who signed the Statement of Use on behalf of CMHC, Inc. is an officer of the true owner, Colombo, Inc., is irrelevant where the Statement of Use was filed in the name of the wrong party." *Id.* at \*5.

The Commissioner noted that an application with an internal inconsistency may be corrected to indicate which party is the proper applicant. In addition to clerical corrections, "[a]n applicant may also correct an ambiguity as to who is the owner of the mark; e.g., where an individual and a corporation are each identified as the owner in different places in an application, or in a Statement of Use, the application may be amended to indicate which party is the proper applicant. However, an amendment substituting one entity for another is not permitted." *Id.* at \*4. The Commissioner noted that in the case before it, "there was no ambiguity in the Statement of Use; CMHC, Inc. was *the only party identified as the applicant*. The 'error' that occurred is more than a mere misidentification of the proper name of the applicant; it identifies another entity as the applicant." *Id.* at \*5 (emphasis added).<sup>3</sup>

Similarly, in this case, there is no ambiguity in the Statement of Use or in the application.

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<sup>3</sup> The Commissioner also found that Colombo's inadvertent failure to comply with the rule did not constitute "unavoidable delay" such that the application could be revived. The application remained abandoned. *Id.* at \*7.

This is not a case where an individual and a corporation are each identified in different places in the application or in the Statement of Use. The application names only the two individuals, and not Mor-Nutech. Exhibit A1. The Statement of Use names only the two individuals, and not Mor-Nutech. Exhibit A11. The Statement of Use explicitly states that the individuals James and Dorothy Morre are "the applicants." Exhibit A12. Accordingly, the Statement of Use identifies the wrong entity. Mor-Nutech, Inc., was the owner of the application as of June 26, 2006, and Mor-Nutech does not appear on the Statement of Use. As *Colombo* points out, the fact that one of the signing individuals is an officer of the company is irrelevant if the Statement of Use was filed in the name of the wrong entity.

Because a Statement of Use must be filed in the name of the owner of the application, the application cannot simply be amended to substitute the correct entity. In this case, the Statement of Use in the '700 Application was filed by two individuals in their capacity as individuals, not by the owner of the application, Mor-Nutech. Accordingly, the '821 Registration is invalid and should be cancelled because a valid Statement of Use was not filed within the statutory time period as specified in 15 U.S.C. § 1051(d).

**VI. THE FACTS SHOW THAT APPLICANTS MADE AN IMPROPER ASSIGNMENT OF AN INTENT-TO-USE APPLICATION**

"[N]o application to register a mark under section 1(b) shall be assignable prior to the filing of an amendment under section 1(c) to bring the application into conformity with section 1(a) or the filing of the verified statement of use under section 1(d), except for an assignment to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing." 15 U.S.C. §1060(a)(1); TMEP §501.01(a).

The '821 Registration is invalid and should be cancelled because the intent-to-use application from which it registered was assigned in violation of the prohibition against assignments of intent-to-use applications contained in 15 U.S.C. §1060(a)(1). Applicants Dorothy and James Morre executed an assignment of the '700 Application, an intent-to-use application, on June 8, 2006. Exhibit B3. A Statement of Use was not filed until June 26, 2006.

Exhibit A11.

An application filed under 1(b) and assigned prior to the filing of a statement of use, and any resulting registration are void if the statutory exception is not met. *The Clorox Co. v. Chemical Bank*, 40 U.S.P.Q.2D 1098 (TTAB 1996). In the *Clorox* case, the Board found that the application was void because the applicant assigned the application to a bank as a security interest, and the bank was not a successor to the business of the applicant. *Id.* at \*20, \*27. The applicant did not transfer any ongoing business to the bank, and the applicant continued to operate the business. *Id.* at \*20.

A "successor" under this statutory exception is an entity that actually receives a transfer of the applicant's business, including a real transfer of goodwill and ongoing business. See *Pfizer, Inc. v. Hamerschlag*, 2001 TTAB LEXIS 729 (TTAB 2001) (finding that an individual applicant did not himself have an ongoing and existing business to transfer to a successor when he assigned his section 1(b) application, as he had not begun using the mark, and did not assign anything else but the trademark application); *In re Circuit City Stores West Coast, Inc.*, 40 U.S.P.Q.2D 1536 (Comm. Patents and Trademarks 1996) (noting that, in case where the applicant wanted to assign its 1(b) applications, intent-to-use applications may be assigned to a "successor," but stating "[s]ince *no other assets are intended to be transferred* with the subject applications, this exception is not applicable to Applicant's proposed transfers") (emphasis added).

Thus, the issue here is whether Mor-Nutech is a "successor" to James and Dorothy Morre. The answer is no, because no real transfer took place on June 8, 2006, other than the transfer of the trademark application. This answer can be seen by looking at the history of Mor-Nutech.

Mor-Nutech, Inc. was created in February 2004, with James Morre its only principal, acting as incorporator and president. Exhibit C1. A few months after its creation, Mor-Nutech entered into a license agreement, in August of 2004, with Scientific Motive Systems, Inc. ("SMS") for sales of a product called CAPSIBIOL-T. Exhibit D1-4. In September of 2006,

Mor-Nutech amended its license agreement with SMS, adding the trademark CAPSOL-T to the license. Exhibit D6. Notably, this amendment was backdated to make it retroactively effective to the date of first use of CAPSOL-T, June 5, 2006. Exhibit D6.

This retroactive amendment reveals that the individuals Dorothy and James Morre did not transfer any business to Mor-Nutech on June 8, 2006, when they executed the assignment, *because Mor-Nutech was already operating the business*. The retroactive amendment is a license from Mor-Nutech to SMS to use the CAPSOL-T trademark beginning on June 5, 2006, the date of first use of CAPSOL-T. Exhibit D6. Thus, from June 5, 2006 to the present, Mor-Nutech has licensed SMS to use CAPSOL-T. Furthermore, SMS is the only entity that has ever used CAPSOL-T, and it has done so under license from Mor-Nutech since June 5, 2006. Exhibit E2. Accordingly, from the very beginning, from the very first use of CAPSOL-T, Mor-Nutech has been the entity operating the business, through its licensee SMS.

Yet James Morre and Dorothy Morre filed the '700 Application in their capacities as individuals on December 7, 2004, despite the fact that Mor-Nutech already existed and had already entered a license agreement with SMS. The '700 Application was filed several months after Mor-Nutech was created and after it had begun its business, yet the two individuals filed the '700 Application explicitly in their capacity as individuals. Exhibit A1. Furthermore, when James and Dorothy Morre assigned the '700 Application to Mor-Nutech, they again explicitly did so as individuals, in their individual capacity. Exhibit B3. Thus, the record of this application makes clear that although Mor-Nutech already existed and was already doing business, the '700 Application was intentionally controlled by two individuals in their individual capacity.

These facts show that while the two individuals owned the trademark application, Mor-Nutech operated the business from the very beginning. Thus, the two individuals did not transfer any existing business or goodwill to Mor-Nutech when they executed the assignment on June 8, 2006. They transferred only the trademark application, which is exactly what the prohibition in §1060 is intended to prevent. The individuals were not doing business, and they had no goodwill to transfer. The individuals never used the trademark, as the only use of the trademark has been

by Mor-Nutech, through its licensee SMS. When the two individuals assigned the trademark, they did not assign any other business assets or property.

Accordingly, Mor-Nutech does not constitute a "successor" to these two individuals under the statutory exception set out above. As a result, the assignment of the 1(b) application, prior to the filing of a Statement of Use, renders the '700 Application and the '821 Registration void.

This prohibition is intended to ensure that intent-to-use applications filed under section 1(b) are filed by entities that truly have an intent to use the trademark in their business, and that these *1(b) applications stay with that business at all times*. See TMEP §501.01(a). Those policy concerns are present here, where two individuals applied for a mark themselves, while the business was actually operated by a pre-existing company. In order to prevent the trafficking of intent-to-use trademarks, and to prevent their ownership apart from the business to which they pertain, assignments like the one that took place here render such applications void.

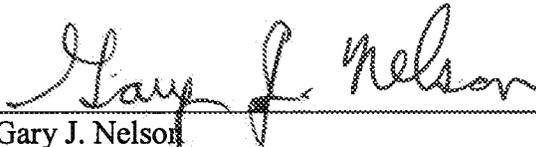
## VII. CONCLUSION

For the reasons give above, the '700 Application is void for errors in the prosecution of the application. Actibiol respectfully requests that this motion be granted, that Actibiol's fourth and fifth grounds for cancellation be sustained, and that the '821 Registration be cancelled. Actibiol also requests that the Board suspend proceedings pending the disposition of this motion.

Respectfully submitted,

DATED: December 20, 2007

By

  
\_\_\_\_\_  
Gary J. Nelson

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

ACTIBIOL, S.A.

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MOR-NUTECH, INC.

Registrant.

Cancellation No. 92047581

T.M. : CAPSOL-T  
R.N. : 3,149,821

**DECLARATION OF TIFFANY  
PARCHER IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT**

I, Tiffany A. Parcher, declare as follows:

1. I am an attorney admitted to practice before the United States Patent and Trademark Office (Reg. No. 58,944), and I am an associate at the law firm of Christie, Parker & Hale, LLP, attorneys for Petitioner Actibiol, S.A.
2. Attached as Exhibit A to this declaration is a true and correct copy of the file history of U.S. Trademark Serial No. 78/528,700.
3. Attached as Exhibit B is a true and correct copy of the trademark assignment record for U.S. Trademark Serial No. 78/528,700.
4. Attached as Exhibit C is a true and correct copy of a printout from the Indiana Secretary of State website providing corporate information about Mor-Nutech, Inc. This document was provided by Registrant in response to Petitioner's first set of requests for production.
5. Attached as Exhibit D is a true and correct copy of a license agreement between Mor-Nutech, Inc. and Scientific Motive Systems, Inc. This document was provided by Registrant in response to Petitioner's first set of requests for production.
6. Attached as Exhibit E is a true and correct copy of relevant pages from Registrant's responses to Petitioner's first set of Interrogatories.
7. Attached as Exhibit F is a true and correct copy of relevant page from Registrant's responses to Petitioner's first set of requests for admission.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 20 day of December, 2007.

  
\_\_\_\_\_  
Tiffany A. Parcher

# **EXHIBIT A**

TM/SM Application 12/07/2004  
 Form No. 1071-008 (12/07/2004)

## Trademark/Service Mark Application, Principal Register

Serial Number: 78528700

Filing Date: 12/07/2004

The table below presents the data as entered.

MARK SECTION	
MARK	CAPSOL-T
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	CAPSOL-T
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
OWNER SECTION	
NAME	Morre, D. James and Morre, Dorothy M.
STREET	1112 Cherry Lane
CITY	West Lafayette
STATE	IN
ZIP/POSTAL CODE	47906
COUNTRY	United States
AUTHORIZED EMAIL COMMUNICATION	No
LEGAL ENTITY SECTION	
TYPE	INDIVIDUAL
COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	005
DESCRIPTION	Nutritional supplement
FILING BASIS	Section 1(b)
SIGNATURE SECTION	
SIGNATURE	/ellenwinner/
SIGNATORY NAME	Ellen P. Winner
SIGNATORY DATE	12/07/2004
SIGNATORY POSITION	Attorney
PAYMENT SECTION	

NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	335
TOTAL AMOUNT	335

**ATTORNEY**

NAME	Ellen P. Winner
FIRM NAME	Greenlee, Winner and Sullivan, P.C.
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ZIP/POSTAL CODE	80301
COUNTRY	United States
PHONE	303-499-8080
FAX	303-499-8089
EMAIL	winner@greenwin.com
AUTHORIZED EMAIL COMMUNICATION	Yes
ATTORNEY DOCKET NUMBER	29-04T
OTHER APPOINTED ATTORNEY(S)	Lorance L. Greenlee, Sally A. Sullivan, Susan K. Doughty, Stephen B. Barone, Steven J. Penner, Michael J. Curtis, Gary B. Chapman

**CORRESPONDENCE SECTION**

NAME	Ellen P. Winner
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EMAIL	winner@greenwin.com
AUTHORIZED EMAIL COMMUNICATION	Yes

**FILING INFORMATION**

SUBMIT DATE	Tue Dec 07 19:32:06 EST 2004
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TEAS STAMP

USPTO/BAS-6621321374-2004  
1207193206609646-78528700  
-2002abd6f5b4668db44ca2fa  
5dd3eedb-DA-644-200412071  
93047894588

## Trademark/Service Mark Application, Principal Register

Serial Number: 78528700

Filing Date: 12/07/2004

### To the Commissioner for Trademarks:

**MARK:** (Standard Characters, see mark)

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The literal element of the mark consists of CAPSOL-T.

The applicant, D. James and Morre, Dorothy M. Morre, a citizen of United States, residing at 1112 Cherry Lane, West Lafayette, IN, United States, 47906, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

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. (15 U.S.C. Section 1051(b)).

**International Class 005: Nutritional supplement**

The applicant hereby appoints Ellen P. Winner and Lorance L. Greenlee, Sally A. Sullivan, Susan K. Doughty, Stephen B. Barone, Steven J. Penner, Michael J. Curtis, Gary B. Chapman of Greenlee, Winner and Sullivan, P.C., Suite 200, 4875 Pearl East Circle, Boulder, CO, United States, 80301 to submit this application on behalf of the applicant. The attorney docket/reference number is 29-04T.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: winner@greenwin.com.

A fee payment in the amount of \$335 will be submitted with the application, representing payment for 1 class(es).

### Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /ellenwinner/ Date: 12/07/2004

Signatory's Name: Ellen P. Winner

Signatory's Position: Attorney

Mailing Address:

Ellen P. Winner  
Suite 200  
4875 Pearl East Circle  
Boulder, CO 80301

RAM Sale Number: 644

RAM Accounting Date: 12/08/2004

Serial Number: 78528700

Internet Transmission Date: Tue Dec 07 19:32:06 EST 2004

TEAS Stamp: USPTO/BAS-6621321374-2004120719320660964

6-78528700-2002abd6f5b4668db44ca2fa5dd3e

edb-DA-644-20041207193047894588

**CAP SOL**

\*\*\* User:jringle \*\*\*

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
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02	5	0	5	4	0:01	"morre"[ow]
03	17	9	8	3	0:01	*{"ckq"}ap{"scz"}ol*[bi,ti]
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06	480	N/A	0	0	0:01	*{"ckq"}ap{"scz"}ul*[bi,ti]
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09	3	1	2	1	0:01	8 and 4
10	13	7	6	2	0:01	*capsol*[bi,ti]

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Session finished 7/12/05 4:43:00 PM

Total search duration 0 minutes 13 seconds

Session duration 2 minutes 59 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 78528700

**To:** Morre, D. James and Morre, Dorothy M. ([winner@greenwin.com](mailto:winner@greenwin.com))  
**Subject:** TRADEMARK APPLICATION NO. 78528700 - CAPSOL-T - 29-04T  
**Sent:** 7/12/05 5:02:08 PM  
**Sent As:** ECOM111@USPTO.GOV  
**Attachments:**

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO:** 78/528700

**APPLICANT:** Morre, D. James and Morre, Dorothy M.

**\*78528700\***

**CORRESPONDENT ADDRESS:**

ELLEN P. WINNER  
GREENLEE, WINNER AND SULLIVAN, P.C.  
4875 PEARL EAST CIR STE 200  
BOULDER, CO 80301-6103

**RETURN ADDRESS:**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

If no fees are enclosed, the address should include the words  
"Box Responses - No Fee."

**MARK:** CAPSOL-T

**CORRESPONDENT'S REFERENCE/DOCKET NO:** 29-04T

Please provide in all correspondence:

**CORRESPONDENT EMAIL ADDRESS:**

[winner@greenwin.com](mailto:winner@greenwin.com)

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and email address.

Serial Number 78/528700

**EXAMINER'S AMENDMENT**

**OFFICE RECORDS SEARCH:** The Office records have been searched and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

**ADVISORY – AMENDMENTS TO GOODS/SERVICES:** If the identification of goods and/or services has been amended below, any future amendments must be in accordance with 37 C.F.R. §2.71(a) and TMEP §1402.07(e).

**AMENDMENT(S) AUTHORIZED:** As authorized by Ellen Winner on July 12, 2005, the application is amended as noted below. *If applicant disagrees with or objects to any of the amendments below, please notify the undersigned trademark examining attorney immediately.* Otherwise, no response is necessary. TMEP §707.

The applicants, D. James Morre and Dorothy M. Morre are both citizens of the United States, and are joint applicants.

/James W. Ringle/

Trademark Attorney

Law Office 111

(571) 272-9393

[jim.ringle@uspto.gov](mailto:jim.ringle@uspto.gov)



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451  
www.uspto.gov

Sep 14, 2005

**NOTICE OF PUBLICATION UNDER 12(a)**

- |                                     |   |
|-------------------------------------|---|
| 1. Serial No.:<br>78/528,700        | 2. Mark:<br>CAPSOL-T<br>Standard Character Mark       |
| 3. International Class(es):<br>5    |   |
| 4. Publication Date:<br>Oct 4, 2005 | 5. Applicant:<br>Morre, James D.<br>Morre, Dorothy M. |

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a notice of allowance pursuant to section 13(b) of the Statute.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained from:

The Superintendent of Documents  
U.S. Government Printing Office  
PO Box 371954  
Pittsburgh, PA 15250-7954  
Phone: 202-512-1800

By direction of the Commissioner.

Correspondence Address:

ELLEN P. WINNER  
GREENLEE WINNER AND SULLIVAN PC  
4875 PEARL EAST CIR STE 200  
BOULDER CO 80301-6103

TMP&I

U.S. Patent and Trademark Office (USPTO)

NOTICE OF ALLOWANCE

NOTE: If any data on this notice is incorrect, please fax a request for correction to the Intent to Use Unit at 571-273-9550. Please include the serial number of your application on ALL correspondence with the USPTO.

ISSUE DATE: Dec 27, 2005

ELLEN P. WINNER  
GREENLEE WINNER AND SULLIVAN PC  
4875 PEARL EAST CIR STE 200  
BOULDER CO 80301-6103

ATTORNEY  
REFERENCE NUMBER

29-04T

**\*\* IMPORTANT INFORMATION: 6 MONTH DEADLINE \*\***

You filed the trademark application identified below based upon a bona fide intention to use the mark in commerce. You must use the mark in commerce and file a Statement of Use (a.k.a. Allegation of Use) before the USPTO will register the mark. You have six (6) MONTHS from the ISSUE DATE of this Notice of Allowance (NOA) to file either a Statement of Use, or if you are not yet using the mark in commerce, a Request for Extension of Time to File a Statement of use ("Extension Request"). If you file an extension request, you must continue to file a new request every six months until the Statement of Use is filed. Applicant may file a total of five (5) extension requests. FAILURE TO FILE A REQUIRED DOCUMENT DURING THE APPROPRIATE TIME PERIOD WILL RESULT IN THE ABANDONMENT OF YOUR APPLICATION.

Please note that both the "Statement of Use " and "Extension Request" have many legal requirements including fees. Therefore, we encourage use of the USPTO forms, available online at <http://www.uspto.gov/teas/index.html> (under "File a PRE-registration form"), to avoid the possible omission of important information. Please note that the Trademark Electronic Application System (TEAS) provides line-by-line help instructions for completing the Extension Request or Statement of Use forms online. If you do not have access to the Internet, you may call 1-800-786-9199 to request the printed form(s).

**The following information should be reviewed for accuracy:**

SERIAL NUMBER: 78/528700  
MARK: CAPSOL-T (STANDARD CHARACTER MARK)  
OWNER: Morre, James D.  
1112 Cherry Lane  
West Lafayette , INDIANA 47906

This application has the following bases, but not necessarily for all listed goods/services:

Section 1(a): NO

Section 1(b): YES

Section 44(e): NO

**GOODS/SERVICES BY INTERNATIONAL CLASS**

005 - Nutritional supplement

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

---

**ADDITIONAL INFORMATION MAY BE PRESENT IN THE USPTO RECORDS**

## Trademark/Service Mark Statement of Use (15 U.S.C. Section 1051(d))

The table below presents the data as entered.

Item	Entered
<b>SERIAL NUMBER</b>	78528700
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 111
<b>NOTICE OF ALLOWANCE</b>	YES
<b>EXTENSION OF USE</b>	NO
<b>REQUEST TO DIVIDE</b>	NO
<b>MARK SECTION</b>	
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	CAPSOL-T
<b>OWNER SECTION (1st owner)(no change)</b>	
<b>OWNER SECTION (2nd owner)(no change)</b>	
<b>ATTORNEY SECTION (no change)</b>	
<b>GOODS AND/OR SERVICES SECTION</b>	
INTERNATIONAL CLASS	005
GOODS AND/OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	06/05/2006
FIRST USE IN COMMERCE DATE	06/05/2006
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT5\IMAGEOUT5\785\287\78528700.xml1\SOU0002.JPG
SPECIMEN DESCRIPTION	scanned product label
<b>PAYMENT SECTION</b>	
NUMBER OF CLASSES	1
SUBTOTAL AMOUNT	100
TOTAL AMOUNT	100
<b>SIGNATURE SECTION</b>	
SIGNATURE	/ellenwinner/
SIGNATORY NAME	Ellen P. Winner
SIGNATORY DATE	06/26/2006
SIGNATORY POSITION	Attorney
<b>FINANCIAL INFORMATION</b>	

SUBMIT DATE	Mon Jun 26 13:36:47 EDT 2006
TEAS STAMP	USPTO/SOU-66.213.213.74-2 0060626133647397762-78528 700-332ba65ba74e805a84a43 a5cf982f1b6f-DA-1966-2006 0626133359618548

USPTO Form 1001 (Rev. 11/2005)  
USPTO Form 1001 (Rev. 11/2005)

**Trademark/Service Mark Statement of Use  
(15 U.S.C. Section 1051(d))**

To the Commissioner for Trademarks:

**MARK: CAPSOL-T**  
**SERIAL NUMBER: 78528700**

This Allegation of Use is being filed after a Notice of Allowance has issued.

The applicants, Morre, James D., having an address of 1112 Cherry Lane, West Lafayette, Indiana United States 47906, and Morre, Dorothy M., having an address of 1112 Cherry Lane, West Lafayette, Indiana United States 47906, are using or are using through a related company or licensee the mark in commerce on or in connection with the goods and/or services as follows:

For International Class: 005, the applicant, or the applicant's related company or licensee, is using the mark in commerce on or in connection with all goods and/or services listed in the application or Notice of Allowance. The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 06/05/2006, and first used in commerce at least as early as 06/05/2006, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) scanned product label.  
Specimen-1

The applicants hereby appoint Ellen P. Winner to submit this Trademark/Service Mark Statement of Use on behalf of the applicants. The attorney docket/reference number is 29-04T.

A fee payment in the amount of \$100 will be submitted with the form, representing payment for 1 class.

**Declaration**

Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /ellenwinner/    Date Signed: 06/26/2006  
Signatory's Name: Ellen P. Winner  
Signatory's Position: Attorney

RAM Sale Number: 1966  
RAM Accounting Date: 06/26/2006

Serial Number: 78528700  
Internet Transmission Date: Mon Jun 26 13:36:47 EDT 2006  
TEAS Stamp: USPTO/SOU-66.213.213.74-2006062613364739  
7762-78528700-332ba65ba74e805a84a43a5cf9  
82f1b6f-DA-1966-20060626133359618548  
[Go Back](#)

# CAPSOL-T®

*An All Natural  
Food Supplement*

100 Capsules  
350 mg each

**Manufactured in the USA**

Sealed with a safety & internal foil seal for your protection.

• DISTRIBUTED BY B&D SERVICE CO. •  
• West Union IL • USA •

## WARNING:

Do not use if allergic to tea or pepper. Women who are pregnant or nursing or individuals with severe health problems should consult with their physician before taking any dietary supplement. Capsol-T® is not intended for use by children.

DO NOT discontinue any medications without your doctor's permission while taking Capsol-T®.

Capsol-T® is not intended to diagnose, cure, treat or replace medical treatment for any disease and has not been evaluated by the FDA.

Capsol-T® is manufactured entirely using only food-grade ingredients that are safe. It contains only decaffeinated green tea concentrate and ground *Capsicum*.

## Dosage:

One capsule every 4 hours including during the night.

### SUPPLEMENT FACTS

Each tablet contains:

Food grade decaffeinated green tea concentrate: . . . . . 343 mg  
Food grade Capsicum Powder . . . . . 7 mg

**FEE RECORD SHEET**

**Serial Number:** 78528700



**RAM Sale Number:** 1966

**Total Fees:** \$100

**RAM Accounting Date:** 20060626

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Total Fee</u>
Statement of Use (SOU)	7003	20060626	\$100	1	\$100

**Transaction Date:** 20060626



**OVERVIEW**

SERIAL NUMBER	78528700	FILING DATE	12/07/2004
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	RINGLE, JAMES W	L.O. ASSIGNED	111

**PUB INFORMATION**

RUN DATE	07/19/2006
PUB DATE	10/04/2005
STATUS	818-SU - STATEMENT OF USE ACCEPTED - APPROVED FOR REGISTRATION
STATUS DATE	07/18/2006
LITERAL MARK ELEMENT	CAPSOL-T

DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPub 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

**FILING BASIS**

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	NO	1 (a)	YES	1 (a)	NO
1 (b)	YES	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO

66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

**MARK DATA**

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	CAPSOL-T
MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

**CURRENT OWNER INFORMATION**

PARTY TYPE	21-SUBSEQUENT OWNER AFTER REGISTRATION
NAME	MOR-NUTECH, INC.
ADDRESS	1112 CHERRY LANE WEST LAFAYETTE, IN 47906
ENTITY	03-CORPORATION
CITIZENSHIP	-NOT FOUND

**GOODS AND SERVICES**

INTERNATIONAL CLASS	005
DESCRIPTION TEXT	Nutritional supplement

**GOODS AND SERVICES CLASSIFICATION**

INTERNATIONAL CLASS	005	FIRST USE DATE	06/05/2006	FIRST USE IN COMMERCE DATE	06/05/2006	CLASS STATUS	6-ACTIVE
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**MISCELLANEOUS INFORMATION/STATEMENTS**

CHANGE IN REGISTRATION	NO
------------------------	----

**PROSECUTION HISTORY**

DATE	FNT CD	FNT TYPE	DESCRIPTION	FNT NUM
------	--------	----------	-------------	---------

07/18/2006	CNPR	P	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	015
07/17/2006	SUPC	I	STATEMENT OF USE PROCESSING COMPLETE	014
06/26/2006	IUAF	S	USE AMENDMENT FILED	013
07/05/2006	ASGN	I	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	012
06/26/2006	EISU	I	TEAS STATEMENT OF USE RECEIVED	011
12/27/2005	NOAM	O	NOTICE OF ALLOWANCE-MAILED	010
10/04/2005	PUBO	A	PUBLISHED FOR OPPOSITION	009
09/14/2005	NPUB	O	NOTICE OF PUBLICATION	008
07/20/2005	PREV	O	LAW OFFICE PUBLICATION REVIEW COMPLETED	007
07/15/2005	ALIE	A	ASSIGNED TO LIE	006
07/12/2005	CNSA	P	APPROVED FOR PUB - PRINCIPAL REGISTER	005
07/12/2005	GNEA	F	EXAMINERS AMENDMENT E-MAILED	004
07/12/2005	CNEA	R	EXAMINERS AMENDMENT -WRITTEN	003
07/12/2005	DOCK	D	ASSIGNED TO EXAMINER	002
12/20/2004	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

**CURRENT CORRESPONDENCE INFORMATION**

ATTORNEY	Ellen P. Winner
CORRESPONDENCE ADDRESS	ELLEN P. WINNER GREENLEE WINNER AND SULLIVAN PC 4875 PEARL EAST CIR STE 200 BOULDER CO 80301-6103
DOMESTIC REPRESENTATIVE	NONE

**PRIOR OWNER INFORMATION**

PARTY TYPE	20-OWNER AT PUBLICATION
NAME	Morre, Dorothy M.
ADDRESS	1112 Cherry Lane West Lafayette, IN 47906
ENTITY	01-INDIVIDUAL
CITIZENSHIP	United States of America
PARTY TYPE	20-OWNER AT PUBLICATION

NAME	Morre, James D.
ADDRESS	1112 Cherry Lane West Lafayette, IN 47906
ENTITY	99-JOINT APPLICANTS
CITIZENSHIP	United States of America
PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Morre, Dorothy M.
ADDRESS	1112 Cherry Lane West Lafayette, IN 47906
ENTITY	01-INDIVIDUAL
CITIZENSHIP	United States of America
PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Morre, James D.
ADDRESS	1112 Cherry Lane West Lafayette, IN 47906
ENTITY	99-JOINT APPLICANTS
CITIZENSHIP	United States of America

# CAPSOL-T

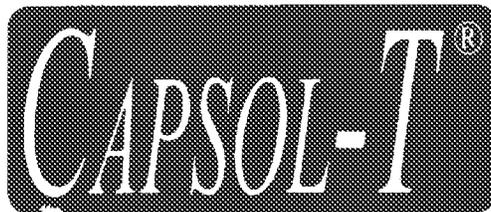
Each tablet contains:  
Food grade decaffeinated green tea concentrate: ..... 343 mg  
Food grade Capsicum Powder ..... 7 mg

**SUPPLEMENT FACTS**

Capsol-T® is manufactured entirely using only food-grade ingredients that are safe. It contains only decaffeinated green tea concentrate and ground *Capsicum*.

**Dosage:**

One capsule every 4 hours including during the night.



*An All Natural  
Food Supplement*

**100 Capsules  
350 mg each**

**Manufactured in the USA**

*Sealed with a safety & internal foil seal for your protection.*

• DISTRIBUTED BY B&D SERVICE CO. •  
• West Union IL • USA •

**WARNING:**

Do not use if allergic to tea or pepper. Women who are pregnant or nursing or individuals with severe health problems should consult with their physician before taking any dietary supplement. Capsol-T® is not intended for use by children.

DO NOT discontinue any medications without your doctor's permission while taking Capsol-T®.

Capsol-T® is not intended to diagnose, cure, treat or replace medical treatment for any disease and has not been evaluated by the FDA.

# NOTE TO THE FILE

SERIAL NUMBER: 78528700

DATE: 08/08/2006

NAME: jrangle1

## NOTE:

..... Checked LEXIS/NEXIS

..... Searched internet using [insert search engine or web site]

..... Checked with Law Library re surname.

..... Checked geographic significance.

..... Checked with translations branch.

..... Checked ID with ID/Class

..... Checked ID with Senior Attorney/Managing Attorney

..... Telephoned attorney/applicant leaving message re: \_\_\_\_\_

..... Telephoned attorney/applicant, application was signed on \_\_\_\_\_

..... Personal interview conducted with attorney/applicant re \_\_\_\_\_

Attorney/applicant called to discuss \_\_\_\_\_

Bulky specimens with examiner.

Acronym website searched.

Changed Tradeups to add. \_\_\_\_\_

Changed Tradeups to delete. \_\_\_\_\_

Changed Tradeups to add Examiner's Amendment.

OTHER Applicant is an Indiana corporation.

Side - 1



**NOTICE OF ACCEPTANCE OF SOU**  
**MAILING DATE: Aug 16, 2006**

The statement of use (SOU) filed for the trademark application identified below has been accepted. This acceptance means that the mark identified below is entitled to be registered. Accordingly, the registration will issue in due course barring any extraordinary circumstances.

For further information, visit our website at: <http://www.uspto.gov> or call the Trademark Assistance Center at 1-800-786-9199.

**SERIAL NUMBER:** 78528700  
**MARK:** CAPSOL-T  
**OWNER:** MOR-NUTECH, INC.

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE  
COMMISSIONER FOR TRADEMARKS  
P.O. BOX 1451  
ALEXANDRIA, VA 22313-1451

FIRST-CLASS MAIL  
U.S. POSTAGE  
PAID

ELLEN P WINNER  
GREENLEE WINNER & SULLIVAN PC  
4875 PEARL E CIR STE 200  
BOULDER, CO 80301-6103

A24

Int. Cl.: 5

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

**United States Patent and Trademark Office**

Reg. No. 3,149,821

Registered Sep. 26, 2006

**TRADEMARK  
PRINCIPAL REGISTER**

**CAPSOL-T**

MOR-NUTECH, INC. (INDIANA CORPORATION)  
1112 CHERRY LANE  
WEST LAFAYETTE, IN 47906

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: NUTRITIONAL SUPPLEMENT, IN CLASS 5  
(U.S. CLS. 6, 18, 44, 46, 51 AND 52).

SN 78-528,700, FILED 12-7-2004.

FIRST USE 6-5-2006; IN COMMERCE 6-5-2006.

JIM RINGLE, EXAMINING ATTORNEY

A25

# **EXHIBIT B**

## TRADEMARK ASSIGNMENT

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Dorothy M Morre		06/08/2006	INDIVIDUAL:
D James Morre		06/08/2006	INDIVIDUAL:
RECEIVING PARTY DATA			
Name:	MOR-NUTECH, INC.		
Street Address:	1112 Cherry Lane		
City:	West Lafayette		
State/Country:	INDIANA		
Postal Code:	47906		
Entity Type:	CORPORATION:		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Serial Number:	78528700	CAPSOL-T	
CORRESPONDENCE DATA			
Fax Number:	(303)499-8089		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	3034998080		
Email:	rfriedland@greenwin.com		
Correspondent Name:	Ronald Friedland		
Address Line 1:	4875 Pearl East Circle, Suite 200		
Address Line 4:	Boulder, COLORADO 80301		
ATTORNEY DOCKET NUMBER:	29-04T		
NAME OF SUBMITTER:	Ellen P. Winner		
Signature:	/ellenwinner/		
Date:	06/26/2006		

CH \$40.00 78528700

900051921

TRADEMARK  
 REEL: 003337 FRAME: 0566

B1

Total Attachments: 1  
source=29-04T\_US\_tm\_assignment#page1.tif

**TRADEMARK**  
**REEL: 003337 FRAME: 0567**

B2

**TRADEMARK ASSIGNMENT**

WHEREAS, Dorothy M. Morr  and D. James Morr , individuals, having an address at 1112 Cherry Lane, West Lafayette, IN 47906 ("ASSIGNORS"), have adopted and is the owner of the following trademark for which an application in the United States Patent and Trademark Office is pending:

TRADEMARK	APPLICATION NO.	FILING DATE
CAPSOL-T	78/528700	December 7, 2004

WHEREAS, the ASSIGNORS wish to transfer all their rights in, to and pertaining to the above trademark and trademark application, including marketing rights therein, as well as the business associated with the trademark to MOR-NUTECH, INC. ("ASSIGNEE"); a corporation they have formed to do business using said trademark and other trademarks, said corporation having a principal place of business at 1112 Cherry Lane, West Lafayette, IN 47906;

WHEREAS ASSIGNEE is desirous of acquiring said trademark and the application therefor, as well as marketing rights therein; and

WHEREAS, ASSIGNEE is assuming the business of ASSIGNORS that pertains to the above trademark;

NOW THEREFORE, in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, ASSIGNORS hereby assign to ASSIGNEE all right, title and interest in the United States and other countries where such rights may exist, together with the goodwill of the business symbolized by said trademark and application to register said trademark, as well as marketing rights associated with said trademark.

The United States Commissioner of Patents and Trademarks is requested to issue the Certificates of Registration to ASSIGNEE, MOR-NUTECH, INC.

**ASSIGNORS**

Dorothy M. Morr , and D. James Morr ,  
individuals.

Dorothy M. Morr 

Dorothy M. Morr 

Date: 6/8/06

D. James Morr 

D. James Morr 

Date: 6/8/06

**ASSIGNEE**

MOR-NUTECH, INC.

D. James Morr 

D. James Morr , President

Date: 6/8/06

# **EXHIBIT C**

**Exhibit A**

*Name Searched On:*  
**MOR-NUTECH (Legal)**

**Current Information**

*Entity Legal Name:*  
**MOR-NUTECH, INC.**

*Entity Address:*  
**1112 CHERRY LANE, WEST LAFAYETTE, IN 47906**

**General Entity Information:**

Control Number: **2004030200240**  
Status: **Active**  
Entity Type: **For-Profit Domestic Corporation**

Entity Creation Date: **2/23/2004**  
Entity Date to Expire:  
Entity Inactive Date:

**The Business Entity Report(s) is(are) due for this entity by 02/29/2008 . Click here to file the Business Entity Report.**

**There are no other names on file for this Entity.**

*Registered Agent(name, address, city, state, zip):*  
**D. JAMES MORRE**  
**1112 CHERRY LANE**  
**WEST LAFAYETTE, IN 47906**

*Principals(name, address, city, state, zip - when provided)*  
**D. JAMES MORRE**  
**Incorporator**  
**1112 CHERRY LANE**  
**WEST LAFAYETTE, IN 47906**

**D. JAMES MORRE**  
**President**  
**1112 CHERRY LANE**  
**WEST LAFAYETTE, IN 47906**

*Transactions:*

Date Filed	Effective Date	Type
02/23/2004	02/23/2004	Articles of Incorporation

**Corporate Reports:**

**Years Paid**  
2006

**Years Due**  
2008/2009

**Additional Services Available:**

**GO** Generate an official Certificate of Existence/Authorization.  
There is a fee of \$20.00 for *accessIndiana* subscribers and a fee of \$21.42 for credit card users. Example Certificate

**(NEW SEARCH)**

*All the entity information captured by the Indiana Secretary of State, pursuant to law, is displayed on the Internet. For further information, please call our office at 317-232-6576. Copies of actual corporate documents can also be ordered online.*

If you encounter technical difficulties while using these services, please contact the *accessIndiana* Webmaster.

If you are unable to find the information you need through the resources provided on this web site, please contact Secretary of State Todd Rokita's Business Services Division at 317-232-6576.

◀ Back to the SOS Web site

# **EXHIBIT D**

## EXCLUSIVE LICENSE AGREEMENT

This Exclusive License Agreement ("Agreement") to be effective as of the 24<sup>th</sup> day of August, 2004 (hereinafter called "Agreement Date"), is by and between MOR-NUTECH, Inc, an Indiana corporation, located at 1112 Cherry Lane, West Lafayette, IN 47906 ("LICENSOR") and scientific Motive Systems, Inc, an Indiana corporation, located at 5364 Tottenham Circle, Terre Haute, In 47803 (LICENSEE").

## 1. DEFINITIONS AS USED HEREIN

1.1 The term "Subject Technology" shall mean all technology, know-how, methods, formulae, documents, materials, tests, and confidential information relating to a "Natural Composition for Prevention and Treatment of Cancer," as more particularly described in Appendix A together with the specified embodiments and limitations. The Subject Technology shall also include the trademarks "Capsibiol" and "Capsibiol-T."

1.2 The term "Licensed Product(s)" shall mean all products that duplicate the Subject Technology.

1.3 The term "the Parties" shall mean LICENSEE AND LICENSOR.

## 2. GRANT OF OPTION AND LICENSE

2.1 LICENSOR hereby grants to LICENSEE a sole and exclusive irrevocable right and license to make, have made, use, market, sell and offer for sale Licensed Products. The License is exclusive even as to LICENSOR.

2.2 The agreement remains in effect as long as LICENSEE continues to make, have made, market, sell and offer for sale Licensed Products.

## 3. PAYMENTS AND REPORTS

3.1 Upon sale of Licensed Products, LICENSEE shall pay LICENSOR the following royalties:

- A Twenty percent (20%) of the first \$2,500,000.00 of annual gross sales of Licensed Products
- B Three percent (3%) of annual gross sales of Licensed Products in excess of \$2,500,000.00.
- C. All royalty payments shall be made on a quarterly basis, and within thirty (30) days of the expiration of the quarter.

3.2 The term "Gross Sales" shall mean the gross amount of money paid by unrelated third parties to LICENSEE for the Licensed Products, less taxes, duties, customer returns, credits, sales commissions, reimbursements, transportation and shipping charges to the customers. The term "Gross Sales" shall also mean any sublicensing revenue received by LICENSEE from unrelated third parties ("SUBLICENSING REVENUE"). The term "year" as used herein shall mean a period of twelve (12) consecutive months commencing from the execution date hereof and each successive twelve (12) month period thereafter during the term of this Agreement.

3.3 In the event of termination or expiration of this Agreement, a final payment shall be accompanied by a written statement of the quantity of Licensed Products sold by LICENSEE, the

*[Signature]* DMH

gross sales collected by LICENSEE during each calendar year and the amount of royalties payable under this Agreement based thereon.

#### 4. RECORDS AND INSPECTION

4.1 LICENSEE shall maintain or cause to be maintained a true and correct set of records pertaining to the Gross Sales collected by LICENSEE under this agreement. During the term of this agreement and for a period of two (2) years thereafter, LICENSEE agrees to permit an accountant selected and paid by LICENSOR and reasonably acceptable to LICENSEE to have access during ordinary business hours to such records as are maintained by LICENSEE as may be necessary, in the opinion of such accountant, to determine the correctness of any report and/or payment made under this Agreement. LICENSOR's access to such records shall be restricted to only once per twelve (12) month period. In the event that the audit reveals an underpayment of royalty by more than 5%, the cost of the audit shall be paid by LICENSEE. Such accountant shall maintain in confidence, and shall not disclose to LICENSOR, any information concerning LICENSEE or its operations or properties other than information directly relating to the correctness of such reports and payments. In the event of an underpayment, LICENSEE shall also pay 7% simple interest, compounded annually, on the unpaid amount.

#### 5. SUBLICENSEES

5.1 All sublicenses granted by LICENSEE of its rights hereunder shall be subject to the same terms and conditions of this License Agreement. LICENSEE shall give LICENSOR prompt notification of the identity and address of each sublicensee with whom it concludes a sublicense agreement and shall supply LICENSOR with a copy of each such sublicense agreement.

#### 6. TERM AND TERMINATION

6.1 Unless earlier terminated as hereinafter provided, this Agreement shall extend perpetually.

6.2 In the event of default or failure of LICENSEE to perform any of the material, terms, covenants or provisions of this Agreement, LICENSEE shall have thirty (30) days after the giving of written notice of such default by LICENSOR to correct such default.

6.3 At the date of any termination of this agreement, LICENSEE shall immediately cease using any of the Subject Technology and return rights to Subject Technology back to LICENSOR, provided, however that LICENSEE prior to the Agreement Date of termination, subject to LICENSEE'S paying to LICENSOR running royalties in accordance with Paragraph 3 with respect thereto and otherwise complying with the terms of this Agreement.

6.4 No termination of this Agreement shall constitute termination or a waiver of any rights of either Party against the other Party accruing at or prior to the time of such termination. The obligations of Sections 4, 10 and 11 shall survive termination of this agreement.

#### 7. ASSIGNABILITY

7.1 This Agreement shall be binding upon and shall inure to the benefit of LICENSOR and its assigns and successors in interest, and shall be binding upon and shall inure to the benefit of

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LICENSEE and its assigns and successors in interest.

## 8. GOVERNING LAW

8.1 Any lawsuit pertaining to any matter arising under or growing out of this Agreement shall be instituted in the City of Lafayette, County of Tippecanoe, State of Indiana. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of Indiana, excluding its conflict of laws rules. In any action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs.

## 9. ADDRESSES

9.1 Any payment, notice or other communication pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to such Party by first class mail, postage prepaid, addressed to it at its address below or as it shall designate by written notice given to the other Party.

LICENSEE:  
Scientific Motive Systems, Inc.  
5364 Tottenham Circle  
Terre Haute, Indiana 47803

LICENSOR  
MOR-NUTECH, Inc  
1112 Cherry Lane  
West Lafayette, IN 47906

## 10. CONFIDENTIALITY

10.1 LICENSOR and LICENSEE agree to maintain the Subject Technology in confidence, and to use the same only in accordance with this agreement. LICENSEE'S obligation of confidentiality shall not apply to information on which LICENSEE can demonstrate (i) was at the time of disclosure in the public domain (ii) has come into the public domain after disclosure through no fault of LICENSEE, (iii) that was known to LICENSEE prior to disclosure thereof by LICENSOR, (iv) was lawfully disclosed to LICENSEE by a third party which was not under an obligation of confidence to LICENSOR with respect thereto; (v) which LICENSEE can reasonably demonstrate was independently developed by LICENSEE without use of the Subject Technology, or (vi) which LICENSEE shall be compelled to disclose by law or legal process. The foregoing obligations of confidentiality shall survive termination of this Agreement.

## II. WARRANTIES AND INDEMNIFICATION

11.1 Neither party makes any representations, extends any warranties, or assumes any responsibilities whatever to use, sale or other disposition of the other party or its vendees or transferees of the Licensed Products.

11.2 LICENSOR represents and warrants that LICENSOR has full right, power and authority to enter into the Agreement and grant all of the right, title and interest in the intellectual property herein granted.

## 12. GENERAL PROVISIONS

12.1 This agreement sets forth the entire agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only in writing signed by both parties.

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12.2 Any waiver by either party of rights arising under this agreement by reason of a breach by the other party or otherwise, or of any condition of this Agreement shall not stop the waiving party from exercising and enforcing any such right or condition at a subsequent time.

12.3 If any provision of this Agreement is adjudged to be invalid, or unenforceable, such provisions shall be deleted herefrom and shall not affect the validity of this Agreement and the enforceability of any other provision herein.

12.4 This Agreement shall not be construed to create a partnership, joint venture, employer-employee relationship or principal-agent relationship between the parties hereto.

12.5 If LICENSEE is ever sold, excluding initial public offerings, LICENSOR will receive 15% of the net proceeds from the sale.

LICENSEE:

Scientific Motive Systems, Inc

By [Signature]  
John W. Van Etten III

State Indiana

County Tippecanoe

Subscribed and sworn to before me this 24th

day of August 200 14

[Signature]  
Notary Public

LISA A CHRISTOPHER  
NOTARY PUBLIC STATE OF INDIANA  
TIPPECANOE COUNTY COMM 44896  
COMMISSION EXPIRES 01-16-2007

LICENSOR

MOR-NUTECH, Inc.

By: [Signature]  
Dr. D. James Morré, \_\_\_\_\_  
Title

[Signature]  
Dr. Dorothy M. Morré, Title

State: Indiana

County: Tippecanoe

Subscribed and sworn to before me this 24th day of August 200 14

[Signature]  
Notary Public

LISA A CHRISTOPHER  
NOTARY PUBLIC STATE OF INDIANA  
TIPPECANOE COUNTY COMM 44896  
COMMISSION EXPIRES 01-16-2007

## APPENDIX A

### SUBJECT TECHNOLOGY

Compositions for treating or preventing cancer and related neoplastic disorders which comprise a mixture of food grade decaffeinated green tea or green tea concentrates standardized as to catechin content and efficacy in combination with standardized food grade *Capsicum* (red chili pepper) sources including *Capsicum* sources treated with food grade enzyme sources to reduce the overall content of capsaicin or to increase efficacy. The efficacy of the mixtures is validated by inhibition of drug-inhibited NADH oxidase activities associated with the surface of cancer cells and of the growth of cancer cells in culture. The compositions must be constituted from natural mixtures but from any food grade source and in any ratio shown to be efficacious. The technology also encompasses the varying modes of administration of the subject compositions as a therapeutic for the treatment of cancer or as a dietary supplement for the prevention of cancer as well as principles and considerations in the manufacture and packaging of the product.

**AMENDMENT TO EXCLUSIVE LICENSE AGREEMENT BETWEEN  
MOR-NUTECH, INC. AND SCIENTIFIC MOTIVE SYSTEMS, INC.  
DATED AUGUST 24, 2004**

This Amendment to the Exclusive License Agreement between Mor-Nutech, Inc. and Scientific Motive Systems, Inc. dated August 24, 2004 is made retroactively effective to the date of first use by Scientific Motive Systems, Inc. of the first used of the Trademarks CAPSIBIOL, CAPSIBIOL-T and CAPSOL-T.

It is agreed that non-exclusive use of the trademark CAPSOL-T owned by Mor-Nutech, Inc., is included within the Subject Technology.

It is further agreed and acknowledged that Mor-Nutech, Inc. has reserved and retained the right to control the nature and quality of all products on which Scientific Motive Systems, Inc. uses and has used the licensed trademarks, and has exercised such quality control since the Scientific Motive Systems, Inc. began using the marks in commerce.

LICENSOR

LICENSEE

MOR-NUTECH, INC.

SCIENTIFIC MOTIVE SYSTEMS, INC.

  
D. James Morr , President  
Date: 9/28/06

\_\_\_\_\_  
Name (print) \_\_\_\_\_  
Date: \_\_\_\_\_

# **EXHIBIT E**

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

ACTIBIOL, S.A.

Petitioner,

v.

MOR-NUTECH, INC.

Registrant.

Cancellation No. 92047581

Trademark: CAPSOL-T

Registration No.: 3,149,821

REGISTRANT'S RESPONSES TO PETITIONER'S  
FIRST SET OF INTERROGATORIES

Registrant, Mor-NuTech, Inc. answers Petitioner, Actibiol, S.A.'s First Set of Interrogatories as follows: Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Registrant, Mor-Nutech, Inc., by its attorneys, hereby serves upon Petitioner's counsel, within the time provided by the Federal Rules of Civil Procedure and the Trademark Rules of Practice, these Objections And Responses To Petitioner's First Set of Interrogatories subject to the General Objections set forth below:

General Objections

1. Registrant objects to those interrogatories to the extent they seek information which is protected from disclosure under the attorney-client privilege or work product immunity.
2. Registrant objects to those interrogatories to the extent that they are unduly broad and burdensome. Unless otherwise indicated, Registrant will provide relevant responses.

**RESPONSE TO INTERROGATORY NO. 12:**

Principally the United States.

**INTERROGATORY NO. 13:**

Identify each person who is or has ever been licensed or permitted by Mor-Nutech to use Mor-Nutech's Mark, identify any pertinent agreements, and explain how Mor-Nutech controls the nature and quality of each such use.

**RESPONSE TO INTERROGATORY NO. 13:**

SMS is the only entity who is or has ever been licensed or permitted by Mor-NuTech to use the CAPSOL-T mark. The License Agreement was signed on September 28, 2006, and made effective retroactively to the date of first use of the mark. Mor-Nutech tests every batch of product by assaying its effect on the growth of cancer cells *in vitro*. The catechin content of the green tea ingredient for every batch is assayed by high-pressure liquid chromatography.

**INTERROGATORY NO. 14:**

State whether Mor-Nutech has ever done business with SMS. If so, describe the nature of such business, including a description of any goods or services sold or purchased, any licensing agreements entered into, and any use of the word marks CAPSOL-T, CAPSIBIOL-T, and any other similar mark.

**RESPONSE TO INTERROGATORY NO. 14:**

See Response to Interrogatories No. 3 and 13.

**INTERROGATORY NO. 15:**

State whether any market research, trademark search, or investigation has ever been conducted for Mor-Nutech's Mark, and if so, state the name of the search or report, the person responsible for conducting and preparing such search or report, and the results obtained.

contexts of such use.

**RESPONSE TO INTERROGATORY NO. 52:**

SMS. The mark has also been used on the CAPSIBIOL-T and CAPSOL-T websites.

Respectfully submitted,

MOR-NUTECH, INC.

By *Ellen P. Winner*

Ellen P. Winner, Attorney for Registrant

Reg. No. 28,547

Greenlee, Winner and Sullivan  
4875 Pearl East Circle, #201  
Boulder, Colorado 80301  
Telephone 303-499-8080  
Fax: 303-499-8089  
Email: [Ewinner@greenwin.com](mailto:Ewinner@greenwin.com)  
Date December 12, 2007

# **EXHIBIT F**

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

ACTIBIOL, S.A.

Petitioner,

v.

MOR-NUTECH, INC.

Registrant.

Cancellation No. 92047581

Trademark: CAPSOL-T

Registration No.: 3,149,821

**ANSWERS TO PETITIONER, ACTIBIOL, S.A.'S FIRST SET OF REQUESTS FOR  
ADMISSIONS FROM REGISTRANT, MOR-NUTECH, INC.**

Registrant, Mor-Nutech, Inc., by its attorneys, answers the Petitioner, ActiBiol, S.A.'s First Set of Requests for Admission from Registrant, Mor-Nutech, Inc. as follows:

**REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO.1:**

Admit that Mor-Nutech owns U.S. Trademark Registration No. 3,149,821.

**RESPONSE TO REQUEST FOR ADMISSION NO.1:**

Admitted.

**REQUEST FOR ADMISSION NO.2:**

Admit that Actibiol began using Actibiol's Mark as a trademark before Mor-Nutech began using Mor-Nutech's Mark.

**REQUEST FOR ADMISSION NO. 21:**

Admit that the average consumer confronted with the specimen Mor-Nutech provided to the United States Patent and Trademark Office is likely to believe that the goods depicted in the specimen originate from Actibiol or from a source affiliated with, sponsored by, approved by, or otherwise connected to Actibiol.

**RESPONSE TO REQUEST FOR ADMISSION NO.21:**

Denied.

**REQUEST FOR ADMISSION NO. 22:**

Admit that registration and use of Mor-Nutech's Mark is likely to cause confusion, mistake, and/or deception among the relevant consumers as to the respective rights of MorNutech and Actibiol, and as to the source, sponsorship, or affiliation of products associated with Mor-Nutech and Actibiol.

**RESPONSE TO REQUEST FOR ADMISSION NO.22:**

Denied.

**REQUEST FOR ADMISSION NO. 23:**

Admit that Mor-Nutech's Application was filed by two individuals, D. James Morre and Dorothy M. Morre.

**RESPONSE TO REQUEST FOR ADMISSION NO.23:**

Admitted.

**REQUEST FOR ADMISSION NO. 24:**

Admit that Mor-Nutech's Application was filed under Section 1(b) (15 U.S.C. §1051(b)).

**RESPONSE TO REQUEST FOR ADMISSION NO.24:**

Admitted.

**REQUEST FOR ADMISSION NO.25:**

Admit that D. James Morre and Dorothy M. Morre executed an assignment on June 8, 2006, assigning Mor-Nutech's Application to Mor-Nutech.

**RESPONSE TO REQUEST FOR ADMISSION NO.25:**

Admitted.

**REQUEST FOR ADMISSION NO.26:**

Admit that D. James Morre and Dorothy M. Morre filed a Statement of Use in Mor-Nutech's Application on June 26, 2006.

**RESPONSE TO REQUEST FOR ADMISSION NO.26:**

Admitted.

**REQUEST FOR ADMISSION NO. 27:**

Admit that D. James Morre did not intend to use Mor-Nutech's Mark at the time he filed Mor-Nutech's Application.

**RESPONSE TO REQUEST FOR ADMISSION NO.27:**

Denied. D. James Morre intended to use the mark through a related company, SMS.

**REQUEST FOR ADMISSION NO.28:**

Admit that Dorothy Morre did not intend to use Mor-Nutech's Mark at the time she filed Mor-Nutech's Application.

**RESPONSE TO REQUEST FOR ADMISSION NO.28:**

Denied. D. James Morre intended to use the mark through a related company, SMS.

**REQUEST FOR ADMISSION NO.29:**

Admit that D. James Morre was aware, prior to December 7, 2004, of royalty payments to Actibiol for sales of products bearing the CAPSIBIOL-T mark in the United States.

**RESPONSE TO REQUEST FOR ADMISSION NO.32:**

Admitted.

Respectfully submitted,

MOR-NUTECH, INC.

By *Ellen P. Winner*

Ellen P. Winner, Attorney for Registrant  
Reg. No. 28,547

Greenlee, Winner and Sullivan  
4875 Pearl East Circle, #201  
Boulder, Colorado 80301  
Telephone 303-499-8080  
Fax: 303-499-8089  
Email: [Ewinner@greenwin.com](mailto:Ewinner@greenwin.com)  
Date December 12, 2007

**CERTIFICATE OF MAILING AND SERVICE**

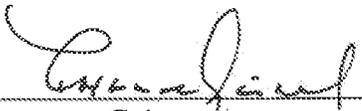
I certify that on December 20, 2007, the foregoing **MOTION FOR SUMMARY JUDGMENT and DECLARATION OF TIFFANY PARCHER IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** is being electronically filed with:

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

It is further certified that on December 20, 2007, the foregoing **MOTION FOR SUMMARY JUDGMENT and DECLARATION OF TIFFANY PARCHER IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** is being served by mailing a copy thereof by first-class mail addressed to:

Ellen P. Winner  
GREENLEE, WINNER & SULLIVAN, P.C.  
4875 Pearl East Circle, Suite 200  
Boulder, CO 80301  
(303) 499-8080 (telephone)  
(303) 499-8089 (facsimile)  
winner@greenwin.com

By



Roxanne Gaines  
Christie, Parker & Hale, LLP  
P.O. Box 7068  
Pasadena, CA 91109-7068