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

Proceeding	92061862
Party	Plaintiff Cyanotech Corporation
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UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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**Cancellation No. 92061862**

Cyanotech Corporation

v.

Nutrex Research, Inc.

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Consolidated with

**Concurrent Use No. 94002616**

Cyanotech Corporation

v.

Nutrex Research, Inc.

v.

Nutrex NV

v.

Monique Loppe

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**Joint Motion to Remove Parties and for  
Registration by Consent**

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June 17, 2016

**Cyanotech’s and Nutrex Research’s  
Joint Motion to Remove Parties and for Registration by Consent**

1. Cyanotech Corporation (“Cyanotech”) and Nutrex Research, Inc. (“Nutrex Research”) hereby jointly request that the USPTO Trademark Trial and Appeal Board (“Board”) (i) under TBMP 1104 remove Defendant Nutrex NV, and under TBMP 1104 and 1106.05 remove Defendant Monique Loppe, as parties in Concurrent Use No. 94002616, which has been consolidated with Cancellation No. 92061862, and (ii) grant registration of Cyanotech’s Application Nos. 85423915 and 85423883 (jointly, “Cyanotech’s Applications”). Cyanotech is Petitioner, and Nutrex Research is a Registrant in Concurrent Use No. 94002616 and in Cancellation No. 92061862 (collectively referred to herein as the “Consolidated Proceeding.”).
2. This Joint Motion supersedes in its entirety the Joint Motion to Remove Nutrex NV and Monique Loppe as Parties filed on March 18, 2016 by Cyanotech and Nutrex Research. The movants hereby withdraw that previous Joint Motion.
3. Nutrex NV’s former Registration Nos. 3798632 and 3849395 were cancelled in ttabvue-92061883-CAN-7 for failure to file an Answer in Cancellation No. 92061883. Those previous registrations were originally cited by an Examining Attorney as bases for refusal to register Cyanotech’s Applications.
4. Monique Loppe’s former Registration No. 3204937 was cancelled for failure to file a Declaration of Use under Section 8. This registration was originally cited by an Examining Attorney as a basis for refusal to register Cyanotech’s Applications.

5. In support of this Joint Motion, Cyanotech and Nutrex Research rely upon (i) the record in the Consolidated Proceeding; (ii) paragraphs 5 and 6 of the Declaration of David M. Wallace submitted January 15, 2013 and May 30, 2013 in Cyanotech's Applications respectively ("2013 Wallace Declaration"), submitted herewith; (iii) the Second Declaration of David M. Wallace dated February 15, 2016 ("February 2016 Wallace Declaration"), submitted herewith; (iv) the Third Declaration of David M. Wallace dated June 6, 2016 ("June 6, 2016 Wallace Declaration"), submitted herewith; (v) the Fourth Declaration of David M. Wallace dated June 16, 2016 ("June 16, 2016 Wallace Declaration"), submitted herewith, and (vi) the Trademark Coexistence Agreement dated June 15, 2016 and entered into by Cyanotech and Nutrex Research, submitted herewith as Exhibit A, and fully incorporated herein.
6. Cyanotech and Nutrex Research have signed the Trademark Coexistence Agreement submitted herewith as Exhibit A to settle the Consolidated Proceeding. Cyanotech and Nutrex Research jointly request removal of Nutrex NV and Monique Loppe as parties in the Consolidated Proceeding, based on the evidence submitted herewith and the arguments presented below, to facilitate settlement of the Consolidated Proceeding.

**PART ONE: REMOVAL OF NUTREX NV AND  
MONIQUE LOPPE AS PARTIES**

7. Cyanotech requests amendment of its Applications to delete reference to Nutrex NV and Monique Loppe as excepted users based on the evidence submitted herewith and the arguments presented below.
8. Deletion of Nutrex NV as an excepted user and removal of Nutrex NV as a party in the Consolidated Proceeding is based on paragraphs 9 to 13 below.

9. Nutrex NV declared in ttabvue-94002616-CNU-11 that its use in the U.S. of the marks in its now-cancelled registrations (“Nutrex NV Marks”) has been participation by its representatives in trade shows, as distinct from use in the U.S. of the Nutrex NV Marks on goods in Class 5.
10. In the Affidavit of Private Investigator David A. Wright (ttabvue-94002616-CNU-10), paragraph 6, the affiant states that the Sales and Marketing Manager of Nutrex NV (Mr. Kurt Van de Mierop) told Mr. Wright that “there is no use in the U.S. [of the Nutrex NV Marks] at this time.”
11. In the 2013 Wallace Declaration, paragraph 6, the declarant states that online searching produced no evidence of any use of the Nutrex NV Marks in the U.S., and that “In a telephone interview with Nutrex NV in Belgium, I was informed that Nutrex NV ‘currently had no distribution in the U.S.’”
12. In the February 2016 Wallace Declaration, paragraph 7, the declarant states that online searching produced no evidence of use of the Nutrex NV Marks in the U.S. as of February 15, 2016 or prior to that date.
13. In the June 6, 2016 Wallace Declaration, paragraph 7, the declarant states that online searching produced no evidence of use of the Nutrex NV Marks in the U.S. as of June 6, 2016 or prior to that date.
14. Deletion of Monique Loppe as an excepted user and removal of Monique Loppe as a party in the Consolidated Proceeding is based on paragraphs 15 to 20 below.
15. Monique Loppe allowed the cancellation of Reg. No. 3204937 (for NUTRIX) by failing to file a Declaration of Use under Section 8, and the registration was cancelled on September 13, 2013. See September 13, 2013 entry in the TSDR file of Reg. No. 320497.

16. Service of process in Concurrent Use No. 94002616 on Monique Loppe at her address of record in TSDR was undeliverable, as shown in ttabvue-94002616-CNU-5 and ttabvue-94002616-CNU-9.
17. After the documents mailed to the address for Monique Loppe of record in TSDR were returned as undeliverable, a search was conducted for persons in France with the name Monique Loppe. The search results presented in the June 16, 2016 Wallace Declaration recite mailing addresses for persons named Monique Loppe in Sillans, France, and in Paris, France. Another record for a Monique Loppe in Houilles, France, does not contain a mailing address. This Joint Motion has been served by USPS Priority Mail Express to the three mailing addresses reported in the June 16, 2016 Wallace Declaration.
18. In the 2013 Wallace Declaration, paragraph 5, the declarant states, “I found no use whatsoever of [now-abandoned] Reg.No: 3204937, NUTRIX, a word mark. I found no website associated with the NUTRIX mark or the owner thereof.”
19. In the February 2016 Wallace Declaration, paragraph 6, the declarant states that online searching produced no evidence of use of Loppe’s NUTRIX mark in the U.S. as of February 15, 2016 or prior to that date.
20. In the June 6, 2016 Wallace Declaration, paragraph 6, the declarant states that online searching produced no evidence of use of Loppe’s NUTRIX mark in the U.S. as of June 6, 2016 or prior to that date.
21. Submitted herewith is a true and accurate copy of the 2013 Wallace Declaration downloaded from TSDR. The February 2016, June 6, 2016, and June 16, 2016 Declarations of David M. Wallace are submitted herewith.
22. Wherefore, Cyanotech and Nutrex Research move that the Board enter an Order against Nutrex NV and Monique Loppe deleting them as excepted

users, and also removing Nutrex NV and Monique Loppe as parties in the Consolidated Proceeding.

**PART TWO: REGISTRATION OF CYANOTECH'S APPLICATIONS  
NUMBERS 85423915 and 85423883 BY CONSENT**

23. As asserted in TSDR records, Cyanotech began using the NUTREX HAWAII mark on its goods in International Class 5 in 1991, and has continuously used the NUTREX HAWAII mark on its goods since 1991.
24. As asserted in TSDR records, Nutrex Research began using the NUTREX RESEARCH mark on its goods in International Class 5 in 2002, and has continuously used the NUTREX RESEARCH mark on its goods since 2002.
25. Nutrex Research's NUTREX RESEARCH mark and Cyanotech's NUTREX HAWAII mark have coexisted on goods in International Class 5 nationwide since 2002.
26. The predominant direct purchasers of Cyanotech's and Nutrex Research's goods are large distributors and national chain retailers with centralized purchasing management and distribution. Such purchasers are not impulse buyers, but are very skilled in distinguishing and specifying goods from various sources, particularly nutritional supplements in Class 5. Marketing messages directed by Cyanotech and Nutrex Research to such purchasers make confusion unlikely among such purchasers as to the source of each party's goods.
27. Cyanotech's market at wholesale and retail levels is nutritional supplements for general health, promoted without emphasis on support for bodybuilding, libido, or weight loss, and its marketing messages, trade channels, and trade dress are directed to such general health market. Retail sales of Cyanotech's

products are primarily through big box retailers, supermarkets, pharmacies, general vitamin shops, and online vendors of general health nutritional supplements.

28. Nutrex Research's market at wholesale and retail levels is nutritional supplements for body building, libido, and weight loss, promoted without emphasis on support for general health, and its marketing messages, trade channels, and trade dress are directed to such body building, libido, and weight loss markets. Retail sales of Nutrex Research's products are primarily through specialty vitamin shops and online vendors of nutritional supplements for bodybuilding, libido, or weight loss. Consumers of nutritional supplements for bodybuilding, libido, or weight loss are extremely attentive to label content and other marketing messages emphasizing bodybuilding, libido, or weight loss, as distinct from marketing messages about general health.
29. Cyanotech's current trade dress has predominantly red, orange, or green background labels, with "calm, soothing" layouts, as shown in Exhibit 1 submitted herewith. Nutrex Research's current trade dress consistently uses black and white labels accented with red, with "emphatic, maximum exertion" layouts, as shown in Exhibit 2 submitted herewith. The parties agree to maintain trade dress no less distinctive than their current trade dress, and will not adopt a trade dress confusingly similar to that of the other party.
30. Cyanotech and Nutrex Research will abstain from any promotion that their respective products are especially suited for use in the other party's market.
31. Neither Cyanotech nor Nutrex Research will use in their advertising and labeling the term NUTREX alone, but will use the term NUTREX only in their respective compound word marks or in their respective design marks.

32. The Trademark Coexistence Agreement annexed as Exhibit A recites the agreement of Cyanotech and Nutrex Research concerning preceding paragraphs 25 to 31 hereof and contains other provisions adequately designed to avoid confusion in the reasonable circumstances in which the marks may be used by purchasers of each party's goods.
33. Wherefore, in view of the Trademark Coexistence Agreement submitted as Exhibit A, over a decade of coexistence of Cyanotech's and Nutrex Research's marks *nationwide*, and the differences in the (i) identity of their goods, (ii) purchasers at wholesale and retail levels, (iii) marketing messages, (iv) trade dress, and (v) trade channels, Cyanotech and Nutrex Research jointly move the Board to grant registration of Cyanotech's Application Nos. 85423883 and 85423915.
34. Wherefore, Cyanotech and Nutrex Research further jointly move that the Board toll the Proceeding pending decision on this Joint Motion to Remove Parties and for Registration by Consent.

June 17, 2016

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June 17, 2016

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Facsimile: (407) 841-2343  
Email: [adoppelt@addmg.com](mailto:adoppelt@addmg.com)  
*Counsel for Nutrex Research, Inc.*

## Certificate of Service

USPS online records, and paper nos. ttabvue-94002616-CNU-5 and ttabvue-94002616-CNU-9, establish that postal mail to Defendant Monique Loppe at her address of record (33 Avenue de Saxe, Paris 75007, France) in TSDR is undeliverable.

I certify that a true and complete copy of Cyanotech's and Nutrex Research's Joint Motion to Remove Parties and for Registration by Consent in Cancellation No. 92061862 (consolidated with Concurrent Use No. 94002616) was served on the parties listed below via USPS Priority Mail Express, postage prepaid.

Ms. Monique Loppe  
159 Rue de la Republique  
38590 Sillans, France

Ms. Monique Loppe  
206 Rue Docteur Guyonnet  
38590 Sillans, France

Ms. Monique Loppe  
Villarica  
57 Rue Boileau  
75016 Paris, France

Nutrex NV  
Attn: Mr. Kurt Van de Mierop  
kurt.vandemierop@nutrex.be  
Achterstenhoek 5  
Lille, 2275  
Belgium  
*Representative of record for Nutrex NV*

June 17, 2016

*/ George E. Darby /*

George E. Darby

Reg. No. 44,053

Darby Law Corporation

*Counsel for*

*Cyanotech Corporation*

TRADEMARK COEXISTENCE AGREEMENT

This TRADEMARK COEXISTENCE AGREEMENT (“Agreement”) is entered into this 15<sup>th</sup> day of June, 2016, and effective as of 15 January 2016, by and between Cyanotech Corporation (“Cyanotech”), a Nevada corporation with a business and mailing address of 73-4460 Queen Kaahumanu Hwy. Suite 102, Kailua-Kona, HI 96740, Petitioner in TTAB Proceeding Numbers 92061862 and 94002616 (jointly, “Proceeding”) before the USPTO Trademark Trial and Appeal Board (“TTAB”), and Nutrex Research, Inc. (“NRI”), a Florida corporation with a business and mailing address of 579 South Econ Circle, Oviedo, Florida 32765, Registrant in the Proceeding.

RECITALS

WHEREAS, Cyanotech claims it began using the NUTREX HAWAII mark on its goods in International Class 5 in 1991, and that it has continuously used the NUTREX HAWAII mark on its goods since 1991; and

WHEREAS, NRI claims it began using the NUTREX RESEARCH mark on its goods in International Class 5 in 2002, and that it has continuously used the NUTREX RESEARCH mark on its goods since 2002; and

WHEREAS, Nutrex Research’s NUTREX RESEARCH mark and Cyanotech’s NUTREX HAWAII mark have coexisted on goods in International Class 5 nationwide since 2002; and

WHEREAS online marketing via the Internet ignores geographic boundaries, and website content becomes a means of setting market boundaries; and

WHEREAS, (i) the predominant direct purchasers of Cyanotech’s and Nutrex Research’s goods are large distributors and national chain retailers with centralized purchasing management and distribution; (ii) such purchasers are not impulse buyers, but are very skilled in

EXHIBIT A

**Exhibit A to Joint Motion and to Final Settlement Agreement**

distinguishing and specifying goods from various sources, particularly nutritional supplements in International Class 5; and (iii) marketing messages directed by Cyanotech and Nutrex Research to such purchasers make confusion unlikely among such purchasers as to the source of each party's goods; and

WHEREAS, (i) Cyanotech's market at wholesale and retail levels is nutritional supplements for general health, promoted without emphasis on support for bodybuilding, libido, or weight loss, and its marketing messages, trade channels, and trade dress are directed to such general health market; and (ii) retail sales of Cyanotech's products are primarily through big box retailers, supermarkets, pharmacies, general vitamin shops, and online vendors of general health nutritional supplements; and

WHEREAS, (i) Nutrex Research's market at wholesale and retail levels is nutritional supplements for body building, libido, and weight loss, promoted without emphasis on support for general health, and its marketing messages, trade channels, and trade dress are directed to such body building, libido, and weight loss markets; (ii) retail sales of Nutrex Research's products are primarily through specialty vitamin shops and online vendors of nutritional supplements for bodybuilding, libido, or weight loss; and (iii) consumers of nutritional supplements for bodybuilding, libido, or weight loss are extremely attentive to label content and other marketing messages emphasizing bodybuilding, libido, or weight loss, as distinct from marketing messages about general health; and

WHEREAS, (i) Cyanotech's current trade dress has predominantly red, orange, or green background labels, with "calm, soothing" layouts, as shown in Exhibit 1 annexed hereto; and (ii) Nutrex Research's current trade dress consistently uses black and white labels accented with red, with "emphatic, maximum exertion" layouts, as shown in Exhibit 2 annexed hereto; and

WHEREAS, each party's products may be incidentally usable in the other party's market, but each party is willing to abstain from any promotion that its products are especially suited for use in the other party's market; and

**EXHIBIT A**

Exhibit A to Joint Motion and to Final Settlement Agreement

WHEREAS, the parties desire to set forth their rights to use trademarks containing the term NUTREX, including without limitation NRI's right to use the trademarks that are the subject of U.S. Reg. Nos 3870696 and 3870697 (owned by NRI), and Cyanotech's right to use trademarks that are the subject of U.S. Application Nos. 85423883 and 85423915 (owned by Cyanotech), on their respective goods and services so that these trademarks may coexist in the marketplace without confusion as to the source of the goods and services, as hereinafter set forth below.

NOW THEREFORE, for and in consideration of the promises, agreements and covenants herein contained, the adequacy, sufficiency and receipt of which are conclusively acknowledged, the parties hereto agree as follows:

1. Definitions.

1.1 "Cyanotech's Marks" shall mean the trademarks that are the subject of U.S. Application Numbers 85423883 and 85423915.

1.2 "NRI's Marks" shall mean the trademarks that are the subject of U.S. Registration Numbers 3870696 and 3870697.

1.3 "Marks" refers to both parties' marks as described in both 1.1 and 1.2 above.

1.4 "Cyanotech's Market" shall mean nutritional supplements for general health, promoted without emphasis on support for bodybuilding, libido, or weight loss.

1.5 "NRI's Market" shall mean nutritional supplements for sports nutrition, body building, libido, and weight loss, promoted without emphasis on support for general health.

2. Marketing Messages.

2.1 Neither party shall use the term NUTREX alone (i.e., as a plain word, as distinct from NUTREX being the literal element of a design mark or as part of a compound (i.e., two or more words) mark) as a trademark or service mark. Cyanotech shall use NUTREX HAWAII,

EXHIBIT A

and NRI shall use NUTREX RESEARCH, in their respective promotional and advertising materials, website content, social media, and similar marketing messages.

2.2 Each party shall encourage the distributors and national chain retailers to which a given party sells its goods (i) not to use the term NUTREX alone (i.e., the plain word NUTREX that is not a part of a design or compound mark) in their promotional and advertising materials, website content, social media, and similar marketing messages, and (ii) to use the terms NUTREX RESEARCH for products bearing NRI's Marks, and NUTREX HAWAII for products bearing Cyanotech's Marks, in their promotional and advertising materials, website content, social media, and similar marketing messages. Notwithstanding the forgoing, neither party shall be responsible for ensuring that third parties that are not controlled by either party hereto adhere to the usage requirements herein for the term NUTREX, and there shall be no sanctions imposed on the parties for any such third-party non-conforming use.

3. The Parties' Use of the Marks.

3.1 Cyanotech agrees to abstain from any promotion that its products are especially suited for use in NRI's Market;

3.2 NRI agrees to abstain from any promotion that its products are especially suited for use in Cyanotech's Market;

3.3 The parties agree to maintain trade dress no less distinctive than their current trade dress, and will not adopt a trade dress confusingly similar to that of the other party.

3.4 Each party shall keep the names, marks, and Internet domains each party now has.

4. Further Assurances.

4.1 NRI agrees not to oppose U.S. Application Numbers 85423883 and 85423915 on publication or re-publication, consents to registration of Cyanotech's Marks, and consents to the filing of a Joint Motion for Removal of Parties and for Registration by Consent to which this Agreement shall be Exhibit A, together with Exhibits 1 and 2 annexed hereto. Neither party will seek to cancel the other's registrations, nor file any lawsuits against the other, regarding the name NUTREX.

EXHIBIT A

**Exhibit A to Joint Motion and to Final Settlement Agreement**

**4.2 Each party agrees that it shall do, execute, acknowledge and deliver, at the other party's expense, all acts, agreements, instruments, notices and assurances as may be reasonably requested by the other party to further effect and evidence the transactions contemplated hereby.**

**5. No Likelihood of Confusion. The parties acknowledge and agree that with the limitations on use set forth herein, and in view of the differences between the parties' Marks, respective goods and channels of trade and trade dress, and the acumen of purchasing managers at distributors and national chain retailers with centralized purchasing and distribution, confusion between the parties' respective goods, services and business is unlikely. The parties further acknowledge and agree that if either party receives a direct inquiry related to the goods and/or services of the other party hereunder, the party receiving such inquiry will use commercially reasonable efforts to direct that inquiry to the other party hereto and both parties will take reasonable, mutually acceptable steps to prevent further instances of misdirected inquiries.**

**6. Representations and Warranties.**

**6.1 Each party hereby represents and warrants to the other that it has the power and authority to execute and deliver this Agreement and to carry out its provisions.**

**7. Notices.**

**7.1 Any notice, demand, waiver, consent, approval, or disapproval (collectively referred to as "notice") required or permitted herein shall be in writing and shall be given personally, by messenger, by air courier, by facsimile transmission, by prepaid registered or certified mail, with return receipt requested, or by email acknowledged by the recipient, addressed to the parties at their respective addresses set forth in this Section 7.1 or at such other address or email address as a party may hereafter designate in writing to the other party. Specifically, notice shall be sent as specified herein to the following addressees:**

**EXHIBIT A**

Exhibit A to Joint Motion and to Final Settlement Agreement

**If to NRI:**

Jens O. Ingenohl, President  
Nutrex Research, Inc.  
579 South Econ Circle  
Oviedo, Florida 32765  
jens@nutrex.com

**If to Cyanotech:**

Gerald Cysewski, Executive Vice-President  
Cyanotech Corporation  
73-4460 Queen Kaahumanu Hwy, Suite 102  
Kailua-Kona, Hawaii 96740  
gcysewski@cyanotech.com

**with a copy to:**

Ava K. Doppelt, Esq.  
Allen, Dyer, Doppelt, Milbrath  
& Gilchrist, P.A.  
255 S. Orange Avenue, Suite 1401  
Orlando, Florida 32801  
adoppelt@addmg.com

**with a copy to:**

George E. Darby, Esq.  
Darby Law Corporation  
P.O. Box 893010  
Mililani, Hawaii 96789  
pto@teleport-asia.com

7.2 A notice shall be deemed received on the date of receipt.

8. **Enforceability.** If any provision of this Agreement shall be invalid or unenforceable, in whole or in part, or as applied to any circumstance, under the laws of any jurisdiction which may govern for such purpose, then such provision shall be deemed to be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, either generally or as applied to such circumstance, or shall be deemed excised from this Agreement, as the case may require, and this Agreement shall be construed and enforced to the maximum extent permitted by law as if such provision had been originally incorporated herein as so modified or restricted, or as if such provision had not been originally incorporated herein, as the case may be.

9. **Modification, Amendment, Supplement, or Waiver.**

9.1 No modification, amendment, supplement to, or waiver of this Agreement or any of its provisions shall be binding upon the parties hereto unless made in writing and signed by the party against whom enforcement of any modification, amendment, supplement, or waiver is sought.

**EXHIBIT A**

**Exhibit A to Joint Motion and to Final Settlement Agreement**

**9.2** A waiver by either party of any of the terms or conditions of this Agreement in any one instance shall not be deemed a waiver of such terms or conditions in the future.

**10. No Third-Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to confer upon any person, other than the parties hereto, or their respective successors or permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**11. Governing Law.** Any dispute between the parties will be raised between the parties themselves or between their legal counsel and attempted to be resolved before any formal dispute resolution is undertaken. Any dispute between the parties that is not resolved by negotiation between the parties or their legal counsel shall be submitted to arbitration in San Francisco, California, under the 2014 WIPO Arbitration Rules, as amended, before a single arbitrator experienced in trademark likelihood of confusion litigation, who is a US-based member of the International Trademark Association (“INTA”) Panel of Mediators, and who is selected by the parties; provided, however, that if the parties cannot agree on an arbitrator, the arbitrator shall be selected by the chairperson of the INTA Alternate Dispute Resolution Committee. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Florida (without giving effect to the principles of conflict of laws thereof).

**12. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. A party assigning its interest in this Agreement shall provide a copy of this Agreement to each prospective assignee, and a notice of such completed assignment to the other party hereto within thirty (30) calendar days of the date of execution of such assignment.

**13. Entire Agreement.** This Agreement, in conjunction with a final settlement agreement to which this Agreement shall be appended as Exhibit A, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous agreements, promises, representations, understandings, and negotiations, whether written or oral, including

**EXHIBIT A**

Exhibit A to Joint Motion and to Final Settlement Agreement

the Memorandum of Understanding dated January 15, 2016. Neither party is deemed to be drafter of this Agreement.

14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the undersigned have executed the above and foregoing Trademark Coexistence Agreement on the date first set forth above.

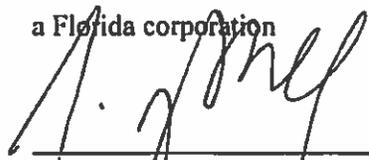
Cyanotech Corporation,  
a Nevada corporation

 Date: 6/15/2016

By GERALD CYSEWSKI

Its Executive Vice-President and  
Chief Science Officer  
"Cyanotech"

Nutrex Research, Inc.,  
a Florida corporation

 Date: 6/15/2016

By JENS INGENOHL

Its President

"NRI"

EXHIBIT A

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500mg 200 Tablets

**\$20.99**



Nutrex Hawaii Hawaiian Spirulina  
16oz Powder

**\$52.99**



Nutrex Hawaii Hawaiian Spirulina  
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Nutrex Hawaii Hawaiian Spirulina  
Tablets 1,000mg 5lb. Bulk Bag

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*Deborah Franke Ogg, 71*

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Nutrex Hawaii BioAstin Hawaiian Astaxanthin 4mg 270 Gelcaps  
**\$75.99**



Nutrex Hawaii BioAstin Hawaiian Astaxanthin 12mg 50 Vegan Soft Gels  
**\$42.99**



Nutrex Hawaii BioAstin Hawaiian Astaxanthin 12mg 75 Vegan Soft Gels  
**\$60.99**



Nutrex Hawaii BioAstin Hawaiian Astaxanthin 4mg 120 Vegan Soft Gels  
**\$43.99**



Nutrex Hawaii BioAstin Hawaiian Astaxanthin 12mg 75 Gelcaps  
**\$56.99**



Nutrex Hawaii BioAstin Hawaiian Astaxanthin 12mg 50 Gelcaps

**\$41.99**



Nutrex Hawaii BioAstin Hawaiian Astaxanthin 12mg 25 Gelcaps

**\$23.99**



Nutrex Hawaii BioAstin Hawaiian Astaxanthin 4mg 120 Gelcaps

**\$41.99**



Nutrex Hawaii BioAstin Hawaiian Astaxanthin 4mg 60 Gelcaps

**\$22.99**



Nutrex Hawaii BioAstin Supreme 6mg 60 Vegan Soft Gels

**\$29.99**



Nutrex Hawaii MD Formulas JointAstin 120 Vegan Soft Gels

**\$39.99**



Nutrex Hawaii MD Formulas EyeAstin 60 Gelcaps

**\$39.99**



Nutrex Hawaii MD Formulas OmegaAstin 60 Vegan Soft Gels

**\$29.99**



Nutrex Hawaii I take BioAstin tshirt

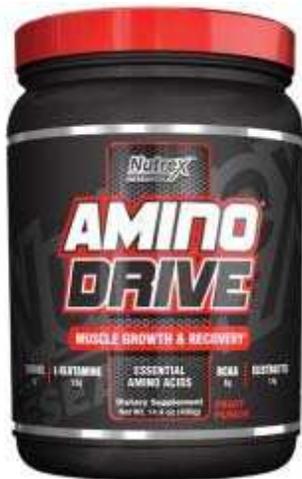
**\$9.99**

# PRODUCTS

Home > Products

- ALL PRODUCTS
- WEIGHT LOSS SUPPORT
- PRE-WORKOUT/ENERGY
- MUSCLE GROWTH/RECOVERY

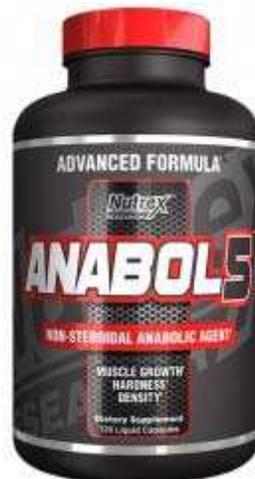
## BLACK PERFORMANCE SERIES



### AMINO DRIVE

BCAA / EAA FORMULA<sup>†</sup>

(119 reviews)



### ANABOL-5

NON-STEROIDAL ANABOLIC AGENT<sup>†</sup>

(15 reviews)



### BCAA DRIVE

MUSCLE GROWTH & RECOVERY<sup>†</sup>

(12 reviews)

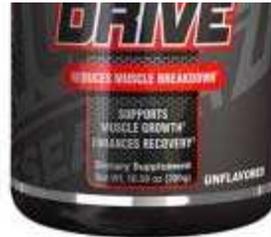




### CREATINE DRIVE

WORLD'S PUREST CREATINE MONOHYDRATE†

(25 reviews)



### GLUTAMINE DRIVE

REDUCES MUSCLE BREAKDOWN†

(7 reviews)



### HEMO-RAGE

INTENSE PRE-WORKOUT ENERGY†

(8 reviews)



### LIPO-6 Rx

CLINICALLY DOSED WEIGHT LOSS†

(13 reviews)



### LIPO-6 BLACK UC

ONE PILL ONLY FAT LOSS AID†

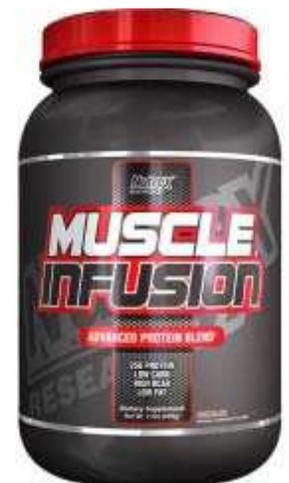
(113 reviews)



### LIPO-6 BLACK HERS UC

ONE PILL ONLY FEMALE FAT LOSS AID†

(32 reviews)



## LIPO-6 BLACK HERS

POWERFUL FEMALE WEIGHT LOSS SUPPORT FORMULA†

(44 reviews)

## LIQUID CARNITINE 3000

HELPS TURN FAT INTO MUSCLE ENERGY†

(2 reviews)

## MUSCLE INFUSION

ADVANCED SIX PROTEIN BLEND†

(211 reviews)



### NIOX

NITRIC OXIDE BOOSTER†

(52 reviews)



### OUTLIFT

CLINICALLY DOSED PRE-WORKOUT†

(9 reviews)



### OUTRAGE EXTREME ENERGY SHOT EXTREME ENERGY IGNITER†

(68 reviews)

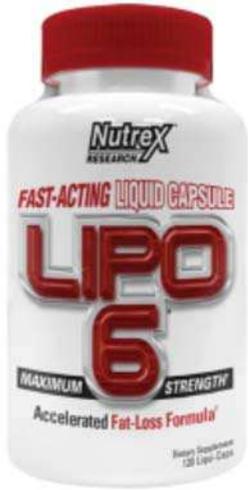


### VITRIX

HELPS IMPROVE SEXUAL PERFORMANCE†

(32 reviews)

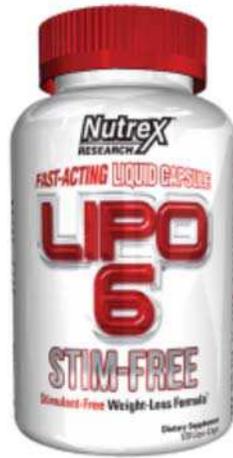
# BASIX DIET SERIES



## LIPO-6

ORIGINAL LIQUID CAPSULE DIET PILL<sup>†</sup>

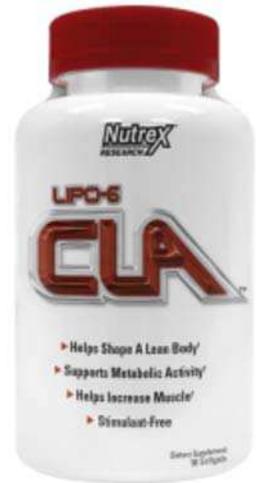
(47 reviews)



## LIPO-6 STIM-FREE

STIMULANT FREE WEIGHT LOSS SUPPORT<sup>†</sup>

(3 reviews)



## CLA

SUPPORTS HIGHER METABOLIC ACTIV

(20 reviews)



## CHROMIUM

HELPS PROMOTE CARBOHYDRATE METABOLISM<sup>†</sup>

(2 reviews)

**UNITED STATES DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE**

In re Application of	)	Trademark Law Office: 113
	)	
Cyanotech Corporation	)	Examining Atty: KAHN, Ahsen
	)	
Serial No.: 85423915 for NUTREX HAWAII	)	Atty Dkt: NUTREXHI.w
	)	
Serial No.: 85423883 for NUTREX (design)	)	Atty Dkt: NUTREX.d
	)	
_____	)	All Apps. Filing Date: 15 Sept. 2011

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

**DECLARATION OF DAVID M. WALLACE**

I, DAVID M. WALLACE, declare:

1. I am the President of Wallace Scientific Consulting in San Diego, CA. I have a Ph.D. in organic chemistry from the Univ. of California at Davis. My professional career has been in medicinal chemistry and biotechnology. I am a registered patent agent with the USPTO with experience in online and traditional research. I have consulted in the areas of freedom to operate, patentability, and prior art matters for over six years and more recently in trademark research matters. All statements herein are based upon my personal knowledge unless otherwise indicated. U.S. states and territories are denoted herein by USPS two letter abbreviations.

2. I was engaged by Cyanotech Corporation to research the geographic areas of use of the following registered trademarks:

Reg.No: 3204937, NUTRIX, a word mark;

Declaration of Dr. David M. Wallace  
Trademark Apps for: NUTREX HAWAII (word mark, 85/423915), and NUTREX (design mark, 85/423883)

Page 2

Reg.No: 3798632, NUTREX, a word mark;

Reg.No: 3849395, a design mark containing the text, NUTREX THE FINISHING TOUCH FOR NUTRITION;

Reg.No: 3870696, a design mark containing the text, NUTREX RESEARCH;  
and

Reg.No: 3870697, for a design mark containing the text, NUTREX RESEARCH (individually, a “Cited Trademark”, and collectively, the “Cited Trademarks”).

3. I used (i) online search engines, (ii) information on the websites of the owners of the Cited Trademarks (other than Reg. 3204937), and (iii) telephone calls to Nutrex Research, Inc. and to Nutrex NV (Belgium) to determine the geographic locations of retailers and distributors in the U.S. that promoted or sold goods identified by the Cited Trademarks of a given owner. My online search strategies included combinations of a Cited Trademark, key words from the Description of Goods of the Cited Trademark, product names found on a registrant’s website, and geographic terms such as state names and zip codes of larger cities, etc.

4. In my opinion, the research results reasonably reflect the current geographic use of the Cited Trademarks. Given the registration dates of the Cited Trademarks, in my opinion it is a reasonable assumption that further geographic expansion of use of the marks of Reg.Nos: 3204937, 3870696, 3870697, 3798632, and 3849395 is unlikely.

5. I found no use whatsoever of Reg.No: 3204937, NUTRIX, a word mark. I found no website associated with the NUTRIX mark or the owner thereof.

Declaration of Dr. David M. Wallace

Trademark Apps for: NUTREX HAWAII (word mark, 85/423915), and NUTREX (design mark, 85/423883)

Page 3

6. Reg.No: 3798632, NUTREX, a word mark, and Reg.No: 3849395, NUTREX THE FINISHING TOUCH FOR NUTRITION, a design mark, are both owned by Nutrex nv naamloze vennootschap (nv), of Lille, Belgium. Extensive online research retrieved no use in U.S. states or territories of Reg.No. 3798632 (NUTREX) or of Reg.No: 3849395 (NUTREX THE FINISHING TOUCH FOR NUTRITION). In a telephone interview with Nutrex NV in Belgium, I was informed that Nutrex NV “currently had no distribution in the U.S.”

7. Reg.No: 3870696, a design mark containing the text, NUTREX RESEARCH and Reg.No: 3870697, a design mark containing the text, NUTREX RESEARCH, are commonly owned by Nutrex Research, Inc., of Oviedo, Florida. In a telephone interview with Nutrex Research, Inc., Nutrex Research, Inc., refused to disclose any information about its distributors or retailers. Through extensive online research, I found use of Reg.Nos. 3870696 and 3870697 (both design marks containing the text, NUTREX RESEARCH) by retailers or distributors in AL, AZ, AR, CA, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, MA, MD, MI, MN, NV, NJ, NY, NC, OH, IK, OR, PA, SC, TN, TX, VA, WA, and WI, and in no other U.S. states or territories.

8. 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. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that he is properly authorized to execute this document on behalf of the Wallace Scientific Consulting; and all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

Declaration of Dr. David M. Wallace

Trademark Apps for: NUTREX HAWAII (word mark, 85/423915), and NUTREX (design mark, 85/423883)

Page 4



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DAVID M. WALLACE

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

Cancellation No. 92061862            )  
                                                  )  
      Consolidated with                )  
                                                  )  
Concurrent Use No. 94002616        )  
                                                  )  
\_\_\_\_\_                                  )

**SECOND DECLARATION OF DAVID M. WALLACE**

I, DAVID M. WALLACE, declare:

1. I am the President of Wallace Scientific Consulting in San Diego, CA. I have a Ph.D. in organic chemistry from the Univ. of California at Davis. My professional career has been in medicinal chemistry and biotechnology. I am a registered patent agent with the USPTO with experience in online and traditional research. I have consulted in the areas of freedom to operate, patentability, and prior art matters for over nine years and in trademark research matters for over three years. All statements herein are based upon my personal knowledge unless otherwise indicated.

2. I was engaged by Cyanotech Corporation to research use in the United States of the following common law trademarks by the named users:

NUTRIX, a word mark, as used by Monique Loppe;

NUTREX, a word mark, and NUTREX THE FINISHING TOUCH FOR NUTRITION, as a word mark or as the literal element in a design mark, as used by Nutrex nv, of Lille, Belgium.

3. NUTRIX as used by Monique Loppe, and NUTREX, and NUTREX THE FINISHING TOUCH FOR NUTRITION as used by Nutrex nv, are individually a “Cited Trademark”, and collectively, are the “Cited Trademarks”.

4. I used (i) online search engines, and (ii) information on the website of Nutrex nv (no website was found for NUTRIX as used by Monique Loppe) to determine the use of the Cited Trademarks in the U.S. My online search strategies included combinations of a Cited Trademark, key words from the Description of Goods of the now-cancelled U.S. Registrations of each Cited Trademark, and product names found on Nutrex nv’s website ([www.nutrex.be](http://www.nutrex.be)).

5. In my opinion, the research results reasonably reflect the complete lack of current use in the U.S. of the Cited Trademarks on goods and/or services.

6. I found no use whatsoever of NUTRIX, a word mark, by Monique Loppe. I found no website associated with Loppe’s NUTRIX mark. Based on my earlier search report on the NUTRIX mark in 2013, submitted 15 January 2013 and 30 May 2013 in Trademark Application Nos. 85423915 and 85423883, respectively (my “First Declaration”), and on the research performed for this Declaration, in my opinion (i) there has been no use of the NUTRIX mark on goods or services in the stream of commerce in the United States, currently or in the past, by Monique Loppe.

7. I found no use of NUTREX, a word mark, or of NUTREX THE FINISHING TOUCH FOR NUTRITION, as a word mark or as the literal element in a design mark, on goods or services in the United States by Nutrex nv. Based on my earlier search report on the NUTREX and NUTREX THE FINISHING TOUCH FOR NUTRITION marks, submitted in my First Declaration, and on the

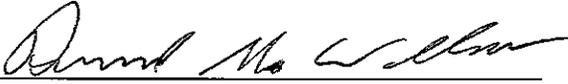
Declaration of Dr. David M. Wallace  
Cancellation No. 92061862  
consolidated with Concurrent Use No. 94002616

Page 3

research performed for this Declaration, in my opinion (i) there has been no use by Nutrex nv of the NUTREX or of NUTREX THE FINISHING TOUCH FOR NUTRITION mark on goods or services in the stream of commerce in the United States, currently or in the past.

8. 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. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that he is properly authorized to execute this document on behalf of Wallace Scientific Consulting; and all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

Executed this 15<sup>th</sup> day of February 2016 in San Diego, California.

  
\_\_\_\_\_  
DAVID M. WALLACE

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

Cancellation No. 92061862            )  
                                                          )  
      Consolidated with                    )  
                                                          )  
Concurrent Use No. 94002616         )  
                                                          )  
\_\_\_\_\_                                          )

**THIRD DECLARATION OF DAVID M. WALLACE**

I, DAVID M. WALLACE, declare:

1. I am the President of Wallace Scientific Consulting in San Diego, CA. I have a Ph.D. in organic chemistry from the Univ. of California at Davis. My professional career has been in medicinal chemistry and biotechnology. I am a registered patent agent with the USPTO with experience in online and traditional research. I have consulted in the areas of freedom to operate, patentability, and prior art matters for over nine years and in trademark research matters for over three years. All statements herein are based upon my personal knowledge unless otherwise indicated.

2. I was engaged by Cyanotech Corporation to research use in the United States of the following common law trademarks by the named users:

NUTRIX, a word mark, as used by Monique Loppe;

NUTREX, a word mark, and NUTREX THE FINISHING TOUCH FOR NUTRITION, as a word mark or as the literal element in a design mark, as used by Nutrex nv, of Lille, Belgium.

3. NUTRIX as used by Monique Loppe, and NUTREX, and NUTREX THE FINISHING TOUCH FOR NUTRITION as used by Nutrex nv, are individually a “Cited Trademark”, and collectively, are the “Cited Trademarks”.

4. I used (i) online search engines, and (ii) information on the website of Nutrex nv (no website was found for NUTRIX as used by Monique Loppe) to determine the use of the Cited Trademarks in the U.S. My online search strategies included combinations of a Cited Trademark, key words from the Description of Goods of the now-cancelled U.S. Registrations of each Cited Trademark, and product names found on Nutrex nv’s website ([www.nutrex.be](http://www.nutrex.be)).

5. In my opinion, the research results reasonably reflect the complete lack of current use in the U.S. of the Cited Trademarks on goods and/or services.

6. I found no use whatsoever of NUTRIX, a word mark, by Monique Loppe. I found no website associated with Loppe’s NUTRIX mark. Based on my earlier search report on the NUTRIX mark in 2013, submitted 15 January 2013 and 30 May 2013 in Trademark Application Nos. 85423915 and 85423883, respectively (my “First Declaration”), on my Second Declaration submitted on 18 March 2016 (“Second Declaration”) in the above-captioned Proceeding, and on the research performed for this Declaration, in my opinion there has been no use of the NUTRIX mark on goods or services in the stream of commerce in the United States, currently or in the past, by Monique Loppe.

7. I found no use of NUTREX, a word mark, or of NUTREX THE FINISHING TOUCH FOR NUTRITION, as a word mark or as the literal element in a design mark, on goods or services in the United States by Nutrex nv. Based on my earlier search report on the NUTREX and NUTREX THE FINISHING

TOUCH FOR NUTRITION marks, submitted in my First Declaration, on my Second Declaration, and on the research performed for this Declaration, in my opinion (i) there has been no use by Nutrex nv of the NUTREX or of NUTREX THE FINISHING TOUCH FOR NUTRITION mark on goods or services in the stream of commerce in the United States, currently or in the past.

8. 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. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that he is properly authorized to execute this document on behalf of Wallace Scientific Consulting; and all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

Executed this 6<sup>th</sup> day of June 2016 in San Diego, California.

  
\_\_\_\_\_  
DAVID M. WALLACE

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

Cancellation No. 92061862            )  
                                                  )  
      Consolidated with                )  
                                                  )  
Concurrent Use No. 94002616        )  
                                                  )  
\_\_\_\_\_                                  )

**FOURTH DECLARATION OF DAVID M. WALLACE**

I, DAVID M. WALLACE, declare:

1. I am the President of Wallace Scientific Consulting in San Diego, CA. I have a Ph.D. in organic chemistry from the Univ. of California at Davis. My professional career has been in medicinal chemistry and biotechnology. I am a registered patent agent with the USPTO with experience in online and traditional research. I have consulted in the areas of freedom to operate, patentability, and prior art matters for over nine years and in trademark research matters for over three years. All statements herein are based upon my personal knowledge unless otherwise indicated.

2. I was engaged by Cyanotech Corporation to research mailing addresses for “Monique Loppe” in France, in view service of papers in the above-captioned Proceeding to the address of record in TSDR being returned as undeliverable.

3. My online searching produced a record of a Monique Loppe, born 23 October 1953, and located in Houilles, France, which record recited that Ms. Loppe is a retired school teacher; I was unable to retrieve a mailing address or telephone number for the Monique Loppe located in Houilles, France.

4. My online searching produced two records of a Monique Loppe located in Sillans, France, which records recited mailing addresses of: 206 Rue Docteur Guyonnet, 38590 Sillans, France, and 159 Rue de la Republique, 38590, Sillans, France. The records for Ms. Loppe of 159 Rue de la Republique, in Sillans, France, recite that she is an active farmer with a business specialized in the cultivation of cereals (except rice), pulses (aka legumes) and oil seeds.

5. My online searching produced a record of a Monique Loppe located in Paris, France, which record recites that she is a manager of a property investment company named "Villarica", with a registered mailing address of: 57 Rue Boileau 75016 Paris, France.

5. My online searching produced no further results for individuals in France named Monique Loppe.

6. 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. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that he is properly authorized to execute this document on behalf of Wallace Scientific Consulting; and all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

[Signature page follows.]

Fourth Declaration of Dr. David M. Wallace  
Cancellation No. 92061862  
consolidated with Concurrent Use No. 94002616

Page 3

Executed this 16<sup>th</sup> day of June 2016 in San Diego, California.

  
\_\_\_\_\_  
DAVID M. WALLACE